82-1295

No.

Office-Supreme Court, U.S.
FILED
FEB 2 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether an at-large election system required by a state constitution violates the fourteenth amendment to the United States Constitution where there is no evidence that the election system was created or is being maintained for discriminatory purposes.

2 Whether, following a decision holding unconstitutional under the fourteenth amendment to the United States Constitution an at-large election system required by a state constitution, a court may impose a judicially-created election system rather than allow the legislative body the opportunity to adopt a new election system where the state constitution and statutes provide the legislative body with expansive powers and do not prohibit it from adopting a remedial election system.

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IN THE

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ESCAMBIA COUNTY, FLORIDA, *et al.*,
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v.

HENRY T. McMILLAN, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

Appellants Escambia County, Florida ("Escambia") and the members of the Escambia Board of County Commissioners ("County Commission"), [1] through counsel, submit this Juris-

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[1] The current members of the County Commission are John E. Frenkel, Jr.; Billy G. Tennant; Kenneth J. Kelson; Gerald Woolard; and Marvin Beck. The remaining parties to this action are: the Supervisor of Elections for Escambia, Joe Oldmixon, who is a defendant but is no longer a party to this appeal; Henry T. McMillan, appellee; Robert Crane, appellee; Charles L. Scott, appellee; William F. Maxwell, appellee; Clifford Stokes, appellee; and the class of all black citizens of Escambia, appellees. Appellants Woolard, Frenkel and Tennant have been substituted for Charles Deese, Jack Kenney and Zearl Lancaster respectively, who were members of the County Commission at the time the suit was brought. This suit also was brought against the School District of Escambia, the Escambia School Board and the members thereof. The School Board aspect of the case was resolved, McMillan v. Escambia County, Fla., 638 F.2d 1239 (5th Cir. 1981), and was not part of the judgment from which this appeal has been taken.

dictional Statement, and request the Court to note probable jurisdiction of appellants' appeal in the above-captioned action.

OPINIONS BELOW

The September 24, 1982 and February 19, 1981 decisions of the United States Court of Appeals for the Fifth Circuit in *McMillan v. Escambia County, Florida* are reported at 688 F.2d 960; 638 F.2d 1249; and 638 F.2d 1239, and are reprinted in Appendix A at 1a and Appendix B at 52a and 30a respectively. The December 3, 1979 Memorandum Decision and Order, the September 24, 1979 Memorandum Decision and the July 10, 1978 Memorandum Decision and Judgment of the United States District Court for the Northern District of Florida are unreported but are reprinted in Appendix B at 54a, 59a, 66a, 71a and 114a respectively.

JURISDICTION

Appellees brought this suit to challenge the at-large system of electing members of the County Commission, which system is required by Fla. Const. art. VIII, § 1(e), and alleged federal jurisdiction under 28 U.S.C. § 1331, 1343, 2201, 2202 (1976).

The Fifth Circuit entered judgment on September 24, 1982, and, on November 4, 1982, denied a suggestion of rehearing en banc. (The Judgment and the order denying the suggestion of rehearing are reprinted in Appendix C at 116a and 118a respectively.) On November 30, 1982, appellants filed with the United States Court of Appeals for the Fifth Circuit a Notice of Appeal to the Supreme Court of the United States. (The notice of appeal is reprinted in Appendix D at 120a.)

Pursuant to 28 U.S.C. § 1254(2) (1976), this Court has jurisdiction over the instant appeal.[2]

[2]The Fifth Circuit held that the provision of Florida's Constitution requiring county commissions to be elected at-large, as applied to elections for the County Commission, violates the fourteenth amendment to the United States Constitution. The Fifth Circuit also upheld the

CONSTITUTIONAL AND STATUTORY PROVISIONS

The provisions of U.S. Const. amend. XIV; Fla. Const. art. VIII, § 1; Fla. Stat. ch. 125 (1981), which are involved in this case, are reprinted in Appendix E at 122a, 123a and 126a respectively.

STATEMENT UNDER RULE 28.4(c)

Because this suit draws into question the constitutionality of Fla. Const. art. VIII § 1(e), 28 U.S.C. § 2403(b) (1976) may be applicable. No Court of the United States, as defined by 28 U.S.C. § 451 (1976), has certified to the Attorney General for the State of Florida, pursuant to 28 U.S.C. § 2403(b), the fact that the constitutionality of the above state constitutional provision has been drawn into question.

STATEMENT OF THE CASE[3]

I. Escambia County, Florida.

Escambia is a non-charter county[4] comprising approximately 661 square miles[5]. According to the 1970 census, the population

relief the district court ordered, which, inter alia, imposed a judicially created election system. In so doing, the Fifth Circuit interpreted Florida's Constitution as prohibiting the County Commission from adopting a new election system to remedy defects found in the existing system. It is appellants' position that this Court's appellate jurisdiction extends to all of the issues presented. *See* Rogers v. Lodge, ___ U.S. ___, 102 S.Ct. 3272 (1982). However, in the event that the Court determines that any of the issues presented does not fall within the Court's appellate jurisdiction, and that, as a result, it may not consider the entire matter on appeal, appellants then would request, pursuant to 28 U.S.C. § 2103 (1976), this jurisdictional statement to be treated as a petition for a writ of certiorari.

[3]Except as otherwise noted, the facts set forth herein are those facts in existence at the time of the trial – May, 1978.

[4]Pretrial stipulation, ¶ F(3).

[5]Bureau of the Census, U.S. Dept. of Commerce, PC80-1-A11, 1980 Census of Population – Florida 8 (1982).

of Escambia was 205,334, of whom 40,362, or 19.7%, were black.[6]

Pursuant to Fla. Const. art. VIII, § 1(e), non-charter counties, such as Escambia, are governed by five-member boards of county commissioners. County commissions have "such power of self-government as is provided by general or special law," and "may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law . . . ."[7] Florida law enumerates specific powers of county commissions, but expressly provides that the power of county commissions to carry on self-government is not restricted to the enumerated powers.[8]

County commissioners are elected to four-year, staggered terms.[9] Candidates in the primary and general elections are elected at-large, but run only from the district in which each resides.[10] There is no majority vote requirement in the general election,

[6]Pretrial Stipulation, ¶ F(1). The current population of Escambia is approximately 233,794, of whom 45,945, or 19.7%, are black. Bureau of the Census, U.S. Dept. of Commerce, PC80-1-B11, 1980 Census of Population – Florida 15, 25 (1982).

[7]Fla. Const. art VIII,§ 1(f).

[8]Fla.Stat. § 125.01 (1981).

[9]Fla. Const. art. VIII, § 1(e).

[10]*Id.;* Fla. Stat. § 99.032 (1981). The at-large system for general elections was instituted in 1901. McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 5 (N.D. Fla. July 10, 1978) (Memorandum Decision) (except as otherwise indicated, further references to the district court's actions of July 10, 1978, are to the Memorandum Decision). Previously, between 1868 and 1901, the governor had appointed county commissioners. *Id.* at 4. By 1900 blacks had been disenfranchised, and in 1901, an amendment to the Florida Constitution establishing at-large elections was ratified. *Id.* at 5.

The at-large system for primary elections was not established until 1954. *Id.* at 5-6. In 1907 a statute was enacted which provided for candidates in the primaries to be elected from single-member districts. 1907 Fla. Laws, ch. 5697, § 1. In 1954 the Florida Supreme Court struck down this statute as violative of Florida constitutional require-

but there is such a requirement in the primary elections.[11]

Since 1945, when the Florida Supreme Court held unconstitutional the white primary,[12] there have been "no racially designated legal restrictions on the ability of black citizens of Escambia County to register, vote or campaign for the County Commission . . . ."[13] There also are no slating organizations.[14] The percentage of eligible blacks who have registered is roughly the same as the percentage of eligible whites, i.e., 66.9% of eligible blacks and 69.7% of eligible whites;[15] and blacks constitute 17% of the registered voters in Escambia.[16]

Blacks in Escambia are active in the Democratic Party. Approximately forty percent (40%) of the Escambia Democratic Committee is black.[17] The Secretary-Treasurer of the Democratic Executive Committee of Florida, William H. Marshall, is black, as is the Treasurer of the Escambia Democratic Executive Committee, John Reed, Jr.[18]

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ment of at-large elections. Ervin v. Richardson, 70 So.2d 585 (Fla. 1954). Due to that decision, subsequent primaries have been conducted under the at-large system.

[11]Fla. Const. art. VI, § 1(e); Fla. Stat. §§ 100.061, 100.091 (1981). There is a filing fee for each candidate equivalent to three percent, and a committee assessment of not more than two percent, of a county commissioner's annual salary. Fla. Stat. § 99.092(1) (1981). If, however, a candidate is unable to afford these fees, he or she may gain ballot access by means of a petition signed by three percent of the registered voters in the county from the candidate's party. *Id.* § 99.095(1).

[12]Davis v. State *ex rel.* Cromwell, 156 Fla. 181, 23 So.2d 85 (1945).

[13]Pretrial Stipulation, ¶ F(17).

[14]*Id.* ¶ F(18).

[15]*Id.* ¶ F(1).

[16]McMillan v. Escambia County, Fla. PCA No. 77-0432, typescript op. at 10 (N.D. Fla. July 10, 1978).

[17]Transcript, under separate cover, at 33-34 (testimony of William H. Marshall, Secretary-Treasurer of the Democratic Executive Committee of Florida).

[18]*Id.* at 17, 19. Mr. Marshall also had been the state committeeperson for the Escambia Democratic Executive Committee. *Id.* at 17.

The Democratic Party promotes equally black and white Democratic candidates who run for office in Escambia.[19] No black has run for the County Commission since 1970.[20] Between 1966 and 1970 three blacks ran for County Commission, but none was elected.[21] No other black has run for the County Commission.[22]

II. Proceedings Below.

On March 18, 1977, the named appellees filed this class action on behalf of themselves and all black citizens in Escambia against Escambia, the members of the County Commission, in their individual and official capacities, and the Supervisor of Elections, in his individual and official capacity, alleging that the at-large system, as designed and/or maintained, denies appellees equal access to the political process leading to the nomination and election to the County Commission in violation of the first, thirteenth, fourteenth, and fifteenth amendments to the Constitution and 42 U.S.C. §§ 1973, 1983 (1976).[23] As relief, appellees sought a declaratory judgment that the at-large election system violates the aforementioned constitutional and statutory provisions, an order enjoining appellants from holding elections under the at-large system, an order imposing a single-member district election system and an award of attorneys' fees and other costs.[24] Between May 15, 1978, and May 25, 1978, a non-jury trial was held before the Honorable

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[19] *Id.* at 20.

[20] Pretrial Stipulation, ¶ F(20).

[21] *Id.* One candidate, John Reed, ran twice — once in 1966 and once in 1970. *Id.*

[22] *Id.*

[23] Compl. ¶¶ II, IV, V(H).

[24] Compl. *ad damnum* clause.

Winston E. Arnow, and on July 10, 1978, the court entered a Memorandum Decision and a Judgment in favor of appellees.[25]

In reaching its decision, the court based its analysis initially on the criteria set forth by the Fifth Circuit in *Zimmer v. McKeithen*[26] for determining the existence of vote dilution (the "*Zimmer* factors").[27] With respect to the primary *Zimmer* factors, the court found that there are no slating organizations which prevent blacks from participating in the election system, that "active efforts are made to encourage" eligible blacks and whites alike to register and to vote, that "there is no significant difference between blacks and whites in that respect" and that white candidates "actively seek" the support of blacks.[28]

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[25]McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D.Fla. July 10, 1978). Trial of this action was consolidated with trial of Jenkins v. City of Pensacola, Fla., PCA No. 77-0433 (N.D. Fla. July 10, 1978), which suit was filed on the same day as *McMillan*. Plaintiffs in *Jenkins* made virtually the same allegations with respect to the Pensacola City Council as plaintiffs in *McMillan* made with respect to the County Commission and the Escambia School Board. The court's July 10, 1978 Memorandum Decision held for plaintiffs in both the *McMillan* and *Jenkins* suits. The *Jenkins* suit has been resolved, Jenkins v. City of Pensacola, Fla., 638 F.2d 1249 (5th Cir. 1981), *appeal* and *petition for cert. dismissed,* ____ U.S. ____, 102 S.Ct. 17 (1981) (by stipulation of the parties); McMillan v. Escambia County, Fla., 638 F.2d 1239 (1981), *appeal* and *petition for cert. dismissed sub nom.* City of Pensacola, Fla. v. Jenkins, ____ U.S. ____, 102 S.Ct. 17 (1981) (by stipulation of the parties), and is not part of this appeal.

[26]485 F.2d 1297 (5th Cir. 1973), *aff'd on other grounds sub nom.* East Carroll Parish School Bd. v. Marshall, 424 U.S. 636 (1976).

[27]The *Zimmer* factors are divided into two categories – "primary factors" and "enhancing factors". The primary factors are: access of the minority to the candidate selection process; responsiveness of the elected officials to the interests of the minority; the tenuousness of the state policy favoring at-large elections; and the effect of past discrimination on the ability of the minority to participate in the election system. *Id.* at 1305. The enhancing factors are: the existence of large districts; the presence of a majority vote requirement; the existence of an anti-single shot voting provision and the absence of a provision for candidates to run from geographic subdistricts. *Id.*

[28]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 10, 15 (N.D. Fla. July 10, 1978).

However, the court concluded that blacks are denied access to the election system because they "have run time and again, and always lost," and because there has been a pattern of racially polarized voting.[29] The court also found that County Commissioners were responsive to the needs of blacks,[30] that the policy underlying the requirement of at-large elections was tenuous[31] and that past discrimination had caused racially polarized voting, which, in turn, has had the effect of reducing the participation in government by blacks.[32]

With respect to the enhancing *Zimmer* factors, the court acknowledged the existence of the residency requirement, the majority vote requirement in the general election and the absence of an anti-single shot voting provision.[33] However, the court observed that no one in recent history had won a general election without a majority and that, even though there is no anti-single shot voting provision, candidates run for numbered places, which renders blacks unable to concentrate their votes in a large field of candidates.[34] The court also determined that Escambia is "geographically large."[35] Taken in the aggregate,

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[29] *Id.* at 10-12.

[30] Appellees did not contest appellants' responsiveness in the following areas: water; sewers; traffic control; fire hydrants; mosquito control; library services; ambulance service; garbage collection and disposal; drainage planning; and housing and corrections. Pretrial Stipulation, ¶ F(22).

[31] This finding was based on the identical considerations as, and was subsumed in, the court's finding on intent. McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 16 (N.D.Fla. July 10, 1978). That finding is discussed at 9 *infra*.

[32] *Id.* at 15-18.

[33] *Id.* at 18. The court noted that there is a majority vote requirement in the primaries. *Id.*

[34] *Id.*

[35] *Id.*

the court found the *Zimmer* factors to show a dilution of black voting strength.[36]

Next, the court examined the issue of intent and concluded that "no discriminatory intent can be found as a motivating factor behind the 1901 amendment" to the Florida Constitution requiring at-large elections.[37] However, the court reached a different result as to the current maintenance of the at-large system. Of primary importance to the court were the County Commissioners' responses to the recommendations of two charter committees, appointed by the County Commission in 1975 and 1977, that county commissioners be elected from single-member districts.[38] The court observed that the County Commissioners testified at trial that they did not include either recommendation in the charter referendum because they believed that commissioners elected at-large would be more responsive to the needs of Escambia, as a whole, than would commissioners from single-member districts.[39] In addition, the court noted that, in their post-trial memorandum, appellants "admit[ted]" that the rejection of the single-member district proposals reflected the Commissioners' desire to retain their incumbency.[40] Based on this evidence, the court determined that the County Commissioners were responsible for retaining the at-large system, and drew the "inference" that race motivated the actions of the Commissioners.[41]

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[36] *Id.* at 19.

[37] *Id.* at 25.

[38] The committee appointed in 1975 proposed a seven-member county commission with five members to be elected from single-member districts and two members to be elected at-large. Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law at 23. The committee appointed in 1977 proposed a five-member county commission with all members to be elected from single-member districts. *Id.*

[39] McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 29 (N.D. Fla. July 10, 1978).

[40] *Id.* at 30.

[41] *Id.* at 31.

In sum, the court concluded that the at-large system for election to the County Commission "effectively dilutes the votes of black citizens" and "is being maintained at least in part for discriminatory reasons."[42] As a result, the court held that the system violates the fourteenth and fifteenth amendments to the Constitution as well as 42 U.S.C. § 1973 (1976).[43] As relief, the court directed the parties to submit proposals to remedy the dilution which the court found the exist.[44]

On August 9, 1978, appellants filed a Notice of Appeal of the court's July 10, 1978 decision. Thereafter, the County Commission adopted, and submitted to the court, an ordinance reapportioning the county commissioners' districts and establishing an election system, which, as amended, provided for a seven-member county commission with five members to be elected from single-member districts and two members to be elected at-large.[45] Appellees proposed a plan which reapportioned the county commissioners' districts differently from appellants' plan and provided for a five-member county commission with all commissioners to be elected from single-member districts.[46]

During this time, the people of Escambia again were considering a change to a charter form of government, and, as a result, the court postponed consideration of the remedy until the proposed form of charter government became known.[47] The charter commission proposed, inter alia, a seven-member county commission with five members to be elected from single-member districts and two members to be elected at-large; and

[42] *Id.* at 32.

[43] *Id.* at 32, 34.

[44] *Id.* at 38; McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (July 10, 1978) (Judgment).

[45] Notice of Adoption of Ordinance Amending Election Plan, Exhibit.

[46] Plaintiffs' Submission of Districting Plan for the County Commission and School Board at 1.

[47] McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (N.D. Fla. Sept. 24, 1979) (Memorandum Decision).

a referendum election on the charter was scheduled for November 6, 1979.[48]

On September 24, 1979, the court issued a Memorandum Decision giving tentative approval to the election system contained in the charter proposal.[49] The court discussed the differences between appellants' plan and the charter plan, and observed that the two plans were "strikingly similar."[50] However, based on its interpretation of *Wise v. Lipscomb,*[51] the court disapproved appellants' plan.[52] The court reasoned that the Florida Constitution prohibits any system of electing county commissioners other than the at-large system which the court already had held unconstitutional, and that the Florida Constitution provides the County Commission only with such powers as the Florida Legislature provides by general or special

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[48] *Id.* at 1-2.

[49] *Id.* at 5.

[50] *Id.* at 2.

[51] 437 U.S. 535 (1978). The issue in *Wise* was whether a plan providing for an election system with a mixture of single-member and at-large districts, which the Dallas City Council had adopted in response to a declaratory judgment that the existing at-large system was unconstitutional, was a judicially imposed or a legislatively enacted plan. This determination was necessary because the Court previously had indicated that when a court holds unconstitutional an existing election system, it is held to a higher standard in fashioning a remedial election system than is a legislature. *Id.* at 540-41 (White, J.). This higher standard requires a court, absent special circumstances, to impose an election system comprised exclusively of single-member districts. *Id.*

[52] McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 3 (N.D. Fla. Sept. 24, 1979). In addition, the court indicated its disapproval of appellants' plan because that plan would not have resulted in blacks' being represented in proportion to their percentage of the population, but, rather, would have assured them of only 14.3% of the seats on the county commission. *Id.* at 4-5. Even though the charter proposal also would have resulted in the same proportion of representation for blacks, the court gave tentative proposal to that plan because plaintiffs did not object to it. *Id.* at 5.

law.[53] Therefore, the court held that, under *Wise*, the County Commission lacked the power to adopt a remedial election system, and that, in the event the charter proposal was rejected, the plan the court would implement would be treated as a judicially imposed plan, which only could provide for single-member districts.[54]

On November 6, 1979, the referendum was held, and the voters rejected the charter proposal.[55] On December 3, 1979, the Court issued a Memorandum Decision and an Order, imposing its plan for elections to the County Commission.[56] The plan which the court imposed provided for a five-member county commission with all of the members to be elected from single-member districts.[57] The boundaries which the court imposed were the same boundaries which appellees had proposed and the court had adopted as the Escambia school board's districts.[58] The court's Order also provided that, following each decennial census, the County Commission was to reapportion the county commissioners' districts to comply with the one-person, one-vote requirement and the orders of the court.[59]

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[53] *Id.* at 3.

[54] *Id.*

[55] McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (N.D. Fla. Dec. 3, 1979) (Memorandum Decision).

[56] McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D. Fla. Dec. 3, 1979).

[57] McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1-2 (N.D. Fla. Dec. 3, 1979) (Memorandum Decision), McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (N.D. Fla. Dec. 3, 1979) (Order).

[58] McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1-2 (N.D. Fla. Dec. 3, 1979) (Memorandum Decision); McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (N.D. Fla. Dec. 3, 1979) (Order).

[59] McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 2 (N.D. Fla. Dec. 3, 1979) (Order).

Finally, pursuant to 42 U.S.C. § 1973a, the court retained jurisdiction over the suit for a period of five years.[60]

On January 3, 1980, appellants filed a Notice of Appeal of the court's December 3, 1979 decision, and, on January 23, 1980, moved the district court for a stay pending appeal of elections under the December 3 Order. On February 15, 1980, the court denied the motion,[61] and, on February 22, 1980, appellants filed a Notice of Appeal of that Order. Also on February 22, 1980, appellants moved the Fifth Circuit for a stay pending appeal of the district court's December 3 Order. On March 10, 1980, the Fifth Circuit stayed the December 3 Order.[62]

On February 19, 1981, the Fifth Circuit rendered its decision in *McMillan v. Escambia County, Florida* (*McMillan I*)[63] reversing that part of the district court's July 10, 1978 decision concerning the at-large election system of electing county commissioners. In so doing, the court first agreed with the district court's finding that racial considerations were not a factor behind the enactment of the 1901 amendment to the Florida Constitution requiring at-large elections.[64] However, the court disagreed with the district court's finding that appellants were maintaining the at-large system for discriminatory purposes.

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[60]*Id.* at 3.

[61]McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D. Fla. Feb. 15, 1980) (Order).

[62]McMillan v. Escambia County, Fla., No. 78-3507 (5th Cir. Mar. 10, 1980) (Order). This Order also consolidated for oral argument and disposition appellants' earlier appeal of the district court's July 10, 1978 Judgment, as well as the appeal of the district court's July 10, 1978 Judgments with respect to the Escambia School Board and the Pensacola City Council.

[63]638 F.2d 1239 (5th Cir. 1981). The Fifth Circuit affirmed those parts of the district court's decision concerning the election systems for the Escambia School Board and the Pensacola City Council. *Id.*

[64]*Id.* at 1244.

The court reviewed the record, and "found no evidence of racial motivation by the County Commissioners in retaining the at-large system."[65] With respect to the expression by the Commissioners of the desire to retain their incumbency, the court reasoned that "the desire to retain one's incumbency unaccompanied by other evidence ought not to be equated with an intent to discriminate against blacks *qua* blacks."[66] The court observed that the Commissioners testified that "'good government'" reasons, not race, motivated them to delete from the charter referendum the proposals for single-member districts and that appellees introduced no evidence to the contrary.[67] The court admonished that "[t]he trial judge, of course, was entitled not to believe the commissioners' testimony; in the absence of contradictory evidence, however, disbelief of that testimony is not sufficient to support a contrary finding."[68] Because there was no contradictory evidence, the Fifth Circuit held that "the evidence falls short 'of showing that the appellants 'conceived or operated [a] purposeful [device] to further racial discrimination.'"[69] Accordingly, the court reversed the portion of the district court's opinion invalidating the at-large system of electing county commissioners.[70]

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[65] *Id.* at 1245.

[66] *Id.*

[67] *Id.* at 1244-45.

[68] *Id.* at 1245.

[69] *Id.* at 1245 (quoting City of Mobile, Ala. v. Bolden, 446 U.S. 55, 66 (1980) (quoting Whitcomb v. Chavis, 403 U.S. 124, 149 (1971))).

[70] The Fifth Circuit's analysis and decision was based entirely on the fourteenth amendment. The court rejected appellees' claims under the fifteenth amendment and 42 U.S.C. § 1973 (1976). The court reasoned that in City of Mobile, Ala. v. Bolden, 446 U.S. 55 (1980), a plurality of this Court held that section 1973 "has an effect no different from that of the Fifteenth Amendment," 446 U.S. at 61, and that, even assuming section 1973 allowed a private right of action, appellees could not succeed under that section unless they also could succeed under the fifteenth amendment. 638 F.2d at 1242 n.8. The court adopted the *Bolden* plurality's view that the fifteenth amendment does not apply to vote dilution claims. *Id.* at 1243 n. 9.

In a separate decision, *McMillan v. Escambia County, Florida* (*"McMillan II"*),[71] the court, based on its decision in *McMillan I*, vacated the December 3, 1979 remedy the district court had ordered.

Thereafter, on April 1, 1981, appellees filed a Petition for Rehearing and a Suggestion of Rehearing En Banc. While the petition and suggestion were pending, the 1980 census was published; and on December 22, 1981, the County Commission, pursuant to Fla. Const. art. VIII, § 1(e); Fla. Stat. § 124.01 (1981), reapportioned the county commissione s' districts.[72] Also while the petition and suggestion were pending, this Court received briefs, and heard argument in, *Rogers v. Lodge*.[73] The Fifth Circuit stayed consideration of appellees' petition and suggestion pending the decision in *Rogers*, and, following that decision, requested the parties to submit briefs on the effect of *Rogers*. Without other briefing and without oral argument, on September 24, 1982, the court granted appellees' petition for rehearing, and, based on *Rogers*, vacated its decision in *McMillan I* concerning elections to the County Commission and its decision in *McMillan II*, and substituted its decision in *McMillan v. Escambia County, Florida ("McMillan III")*.[74]

The court first examined the impact of *Rogers*, and observed that, in *Rogers*, the Court reaffirmed the holding of a majority in *City of Mobile, Alabama v. Bolden*[75] that evidence of discriminatory purpose is necessary to sustain a challenge to an election system under the equal protection clause of the four-

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[71]638 F.2d 1249 (5th Cir. 1981).

[72]Minutes of December 22, 1981 County Commission Meeting at 5-6.

[73]___ U.S. ___, 102 S.Ct. 3272 (1982).

[74]688 F.2d 960 (5th Cir. 1982). On October 22, 1982, the court denied appellees' suggestion of en banc consideration. McMillan v. Escambia County, Fla., Nos. 78-3507, 80-5011 (5th Cir. Oct. 22, 1982).

[75]446 U.S. 55 (1980).

teenth amendment.[76] The court also determined that *Rogers* gave greater weight to the *Zimmer* factors and, by applying the "clearly erroneous" standard of Fed. R. Civ. P. 52 to findings of discriminatory intent, greater deference to the findings by the district court than had the *Bolden* plurality.[77] In view of these determinations and its determination that, consistent with *Rogers*, the district court had not limited its inquiry to the *Zimmer* factors, the court held that the district court had applied the proper legal standard applicable to vote dilution cases.[78]

The court then reiterated the district court's findings and concluded that, under *Rogers*, it could not "say the district court's finding of intent was clearly erroneous."[79] Therefore, the court upheld the district court's July 10, 1978 decision concerning elections to the County Commission.

Because the court upheld the July 10, 1978 decision, it then reviewed the district court's December 3, 1979 remedy. The court agreed with the district court's analysis of the remedy issue, held that the remedial plan ordered by the district court was within that court's discretion, and, accordingly, affirmed the district court's December 3, 1979 decision.[80] Due to the

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[76] *McMillan III*, 688 F.2d at 964.

[77] *Id.* at 964-965.

[78] *Id.* at 965. The court indicated that the district court had gone beyond the *Zimmer* factors by looking into, and drawing an inference from, the County Commission's responses to the single-member district proposals. *Id.*

[79] *Id.* at 965-69. The court did not address appellees' arguments based on 42 U.S.C. § 1973 (1976), *as amended by* Pub. L. No. 97-205, 96 Stat. 131 (1982), because it had not afforded appellants the opportunity to respond to those appellees' arguments. *Id.* at 961 n. 2. The court also did not address appellees' fifteenth amendment claims. *Id.* However, the court concluded that *Rogers*, which did not address either the fifteenth amendment or section 1973, provided "no basis for departing from the *Bolden* plurality's analysis." *Id.*

[80] *Id.* at 969-73. Specifically, the court agreed with the distinction the district court drew between this case and *Wise v. Lipscomb*. The court reached this result by adopting the analysis of Justices White,

to the passage of time between the December 3, 1979 decision and the decision in *McMillan III*, the Fifth Circuit remanded the case to the district court with instructions to revise the scheduling terms of the remedial order.[81]

THE QUESTIONS ARE SUBSTANTIAL

I. An At-Large Election System Is Not Unconstitutional Per Se, and May Not Be Invalidated Where There Is No Evidence Showing that the System Was Created or Is Being Maintained for Discriminatory Purposes.

The Fifth Circuit's decision in *McMillan III* to vacate its decision in *McMillan I* was premised entirely on its erroneous conclusion that this Court's decision in *Rogers* shows "a more favorable view of the *Zimmer* factors and a greater deference to the finding of the district court than the analysis of the *Bolden* plurality."[82] Equally erroneous was the Fifth Circuit's application of the standard which, in light of *Rogers*, it perceived as governing challenges under the fourteenth amendment to at-large election systems. The court did not digress from its finding in *McMillan I* that there was no evidence to show that the at-large system for election to the County Commission is being maintained for a discriminatory purpose. Nevertheless, the court upheld the district court's decision that the at-large system violates the fourteenth amendment.

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joined in by Justice Stewart, rather than the analysis of Justice Powell, joined in by Chief Justice Burger and Justices Blackmun and Rehnquist, because, in the court's view, the analysis of Justice White controlled the outcome of the suit. *Id.* at 972. Based on this analysis, the court concluded that the Florida Constitution limits the power of the County Commission to the powers specifically authorized by state law, which does not include the power to adopt a remedial election system; thus the County Commission lacks the power to adopt such a system. *Id.*

[81] *Id.* at 973. The Fifth Circuit denied appellants' motion for a stay of mandate, McMillan v. Escambia County, Fla., Nos. 78-3507, 80-501 (5th Cir. Nov. 23, 1982), and Justice Powell denied appellants' application for stay of judgment, McMillan v. Escambia County, Fla., No. A-494 (U.S. Dec. 2, 1982).

[82] *Id.* at 964.

To invalidate an at-large election system where there is no evidence that the system was established or is maintained for discriminatory purposes is tantamount to holding at-large election systems unconstitutional per se. This Court consistently has refused to make such a holding,[83] and the Fifth Circuit must not be allowed to effect such a drastic change in constitutional law.

A. The Court in *Rogers* Applied the Same Legal Standard to the Finding of Discriminatory Intent as the Plurality Applied in *Bolden*.

In *Bolden* the plurality reiterated that an at-large election system could violate the fourteenth amendment only if its "purpose were invidiously to minimize or cancel out the voting potential of racial or ethnic minorities" and, that, therefore, "[a] plaintiff must prove that the disputed plan was 'conceived or operated as [a] purposeful devic[e] to further racial . . . discrimination.'"[84] Consistent with this requirement, the plurality reasoned that while, "the presence of the indicia relied on in *Zimmer* may afford some evidence of a discriminatory purpose, satisfaction of those criteria is not of itself sufficient proof of such a purpose."[85] The majority opinion in *Rogers* sets forth the same standard, and, because it is a majority opinion, firmly establishes that standard as law.

In *Rogers* the Court also reiterated that at-large election systems only "violate the Fourteenth Amendment if 'conceived or operated as purposeful devices to further racial . . . discrimination' by minimizing, cancelling out or diluting the voting strength of racial elements in the voting population."[86]

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[83] *E.g., Rogers*, 102 S.Ct. at 3275; White v. Regester, 412 U.S. 755, 765 (1973); Whitcomb v. Chavis, 403 U.S. 124, 142 (1971).

[84] 446 U.S. at 66 (quoting Whitcomb v. Chavis, 403 U.S. 124, 149-50 (1971)).

[85] *Id.* at 73.

[86] 102 S.Ct. at 3275 (quoting Whitcomb v. Chavis, 403 U.S. 124, 149-50 (1971)).

The Court then discussed and rejected the argument that the district court's decision holding unconstitutional Burke County's at-large election system was infirm because the court had relied on the *Zimmer* factors:

> [W]hile recognizing that the evidentiary factors identified in *Zimmer* were to be considered, the District Court was aware that it was 'not limited in its determination only to the *Zimmer* factors' but could consider other relevant factors as well.[87]

For this reason, the Court concluded that the district court had applied the proper legal standard.[88]

It is apparent, therefore, that the plurality opinion in *Bolden* and the majority opinion in *Rogers* both adopted and applied the identical legal standard. As a precondition to a court's invalidating an at-large election system, both opinions require a plaintiff to prove that the system was created or is maintained for discriminatory purposes, and also provide that the proof and findings may not be limited to the *Zimmer* factors.

With respect to the deference accorded the findings of a district court, this Court in *Rogers* expressly held that, pursuant to Fed.R.Civ. P.52, a district court's findings concerning discriminatory intent are not to be disturbed unless clearly erroneous.[89] Although the plurality in *Bolden* did not address specifically this issue, there is no doubt, particularly in light of the plurality's lengthy discussion of the district court's findings,[90] that it too applied the clearly erroneous standard. The difference in outcomes between *Rogers* and *Bolden* is attributable solely to the facts of each case, including the failure of the district court in *Bolden* to make findings beyond the *Zimmer* factors, and not to the application of a different legal stan-

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[87] *Id.* at 3278 (quoting district court opinion).

[88] *Id.*

[89] *Id.* at 3278-79.

[90] 446 U.S. at 71-75.

dard. The Fifth Circuit, therefore, erred severely in concluding that *Rogers* established a different legal standard from the plurality opinion in *Bolden* and in basing the reversal of its opinion in *McMillan I* on that conclusion.

B. There Is No Evidence that the At-Large Election System Was Created or Is Being Maintained for Discriminatory Purposes.

Of additional concern is the Fifth Circuit's application of the clearly erroneous standard to the findings of the district court because, evidently, the court interpreted this standard as precluding it absolutely from reversing the district court's finding of discriminatory intent. This is most dramatically illustrated by the Fifth Circuit's discussion of the district court's interpretation of the County Commission's responses to the charter committees' proposals for single-member districts, which the Fifth Circuit concluded was the one indication that the district court had not limited its inquiry to the *Zimmer* factors.[91]

In *McMillan I* the court reviewed the entire record, including the Commissioners' testimony that they rejected the portion of the charter proposal providing for single-member district elections for good government reasons and the indication in appellants' post-trial memorandum that the Commissioners' actions also were based on the desire to retain their incumbency, and found "no evidence of racial motivation by the County Commissioners in retaining the at-large system."[92] In reaching this conclusion, the court emphasized that appellees had failed to offer any "contradictory evidence."[93]

The Court did not alter this finding in *McMillan III*. Indeed, with respect to the element which was of greatest significance to the district court — the Commissioners' desire to retain their in-

[91] *McMillan III*, 688 F.2d at 965.

[92] 638 F.2d at 1244-45.

[93] *Id.* at 1245.

cumbency – the court specifically noted that "we do not depart from our prior conclusion that desire to maintain one's incumbency does not equal racially discriminatory intent."[94] If the *Zimmer* factors, alone, may not equal discriminatory intent, and the only additional factor shows an absence of such intent, then it must be clearly erroneous for a court to find that an election system is being maintained for discriminatory purposes. The Fifth Circuit erred in so failing to hold.

An equally fundamental reason why the courts below were precluded from finding discriminatory intent is that, irrespective of appellants' actions, appellants in no way could be responsible for the creation or maintenance of the at-large election system. That system is, and always has been, required by the Florida Constitution. Appellants played no role whatsoever in the enactment of the constitutional provision; and any change in that provision would require an amendment to Florida's Constitution, a process over which appellants have no control.[95] Appellees not only failed to name as parties those persons or entities arguably responsible, at least in part, for the creation and maintenance of the constitutional requirement of at-large elections, e.g., the State of Florida, the Governor of Florida or the members of the Florida Legislature, but, more importantly, also failed to offer evidence, and the courts failed to find, that this constitutional provision is being maintained for discriminatory purposes.[96]

Although Fla. Stat. § 125.60 (1981) allows a majority of the qualified electors of a non-charter county to adopt a charter which provides a system for electing county officials, on November 6, 1979, the people of Escambia rejected a proposal for a change to a charter government.[97] That proposal, inter

[94] *McMillan III*, 688 F.2d at 969 n. 19.

[95] *See* Fla. Const. art. XI.

[96] In a letter to counsel dated August, 4, 1977, Judge Arnow, with-explanation, rejected appellants' argument that the State and the Governor should have been joined as parties.

[97] *See supra* p. 10-12. Sixty-two (62) of Florida's sixty-seven (67) counties have remained non-charter counties.

alia, provided for a seven-member county commission with five members to be elected from single-member districts and two members to be elected at-large.[98] Even assuming that the actions of the people of Escambia may be attributable to appellants, no evidence was introduced and no finding was made showing that racial considerations were a factor in the people's rejection of the charter proposal.[99]

Accordingly, because appellants were and are not a factor behind the creation and maintenance of the at-large system of electing members of the County Commission, the inquiry should not have focused on their actions. Under these circumstances, the courts could not have found that appellants are maintaining the at-large system for discriminatory reasons.

Even assuming, arguendo, that the inquiry should have focused on the actions of appellants, and, further, that the presence of an aggregate of the *Zimmer* factors, alone, were sufficient to sustain appellees' claims,[100] there still is no evidence that race is a motivating factor behind the maintenance of the at-large system. In examining this case under the *Zimmer* analysis, one is struck immediately by the dramatic difference between the facts herein and the facts of *Rogers*. With respect to the primary *Zimmer* factors, there may be no doubt, first, that

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[98] *Id.*

[99] Although the County Commission previously had played a role in the presentation for referendum of a charter proposal and had stricken from the proposal the provision for county commissioners to be elected from single-member districts, as the Fifth Circuit concluded in *McMillan I*, the uncontroverted evidence established that race was not a factor behind that decision. 638 F.2d at 1245. As discussed at 20 *supra*, the Fifth Circuit did not depart from this conclusion in *McMillan III*.

[100] Appellants already have shown, and the Fifth Circuit has agreed, that race was not a consideration behind the one factor which the Fifth Circuit determined to be a non-*Zimmer* factor, *supra* pp. 14, 20-21.

blacks are afforded full access to the candidate selection process and to the entire elector process. Unlike *Rogers*, where blacks were a "substantial majority" of the population but a "distinct minority" of the registered voters,[101] blacks in Escambia constitute approximately the same percentage of the registered voters as they do percentage of the population.[102] Indeed, the district court found that "active efforts" are made to encourage blacks to vote, and that eligible blacks and whites register at approximately the same rate.[103] The court also found that there are no slating organizations which deny blacks access to the election system, and that white candidates "actively seek" the support of blacks.[104] Apart from these findings, the record reveals that blacks are active in the Democratic Party.[105]

Also unlike *Rogers*, there is no "overwhelming evidence of bloc voting along racial lines"[106] in elections for the County Commission. Although the court found racial polarization of voting, its finding was based almost exclusively on statistical evidence presented by appellees.[107] In view of the fact that only three blacks have run for the County Commission, that statistical evidence and the finding derived therefrom are, at best, dubious. This is confirmed by appellees' own expert, Dr. Charles L. Cottrell, who, in testifying about appellees' statistical

[101]102 S.Ct. at 3279.

[102]*See supra* p. 5.

[103]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 10 (N.D.Fla. July 10, 1978).

[104]*Id.* at 10, 15.

[105]*See supra* pp. 5-6.

[106]*Rogers*, 102 S.Ct. at 3279.

[107]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 12-15, 17-18 (N.D. Fla. July 10, 1978). The court also found that the filing fee denies blacks access to the candidate selection process. *Id.* at 10. However, in making this finding the court failed to discuss the reasons underlying the filing fee or to recognize the fact that, if a candidate is unable to afford the fee, he or she may gain ballot access through a petition signed by only three percent of the registered voters in the county from the candidate's party, *see supra* note 11.

evidence, expressed doubt that a finding could be made on racial polarization in elections for the County Commission because of the small number of blacks who had run for that office.[108] In view of the highly questionable nature of the statistical evidence on polarization, and the absence of corroborating evidence, there was no basis for any finding other than that blacks are able to participate fully in all aspects of the political process.[109] The district court clearly erred in finding

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[108]Transcript, under separate cover, at 30-31. There are additional flaws in the method appellees used to determine the existence of racial polarization. For example, such factors as incumbency and the relative qualifications of the candidates were not taken into account. Transcript at 307-338 (testimony of appellees' expert, Dr. Glenn D. Curry). Also, racial polarization could be found where a black wins an election, if blacks only vote for the black candidate and whites also vote for the black candidate but to a lesser extent. *Id.* at 333-38; *Id.*, under separate cover, at 50-51 (testimony of appellants' expert, Dr. Manning J. Dauer).

[109]The majority of the statistical evidence and testimony concerning the polarization issue, as well as the court's discussion of that issue, centered on elections for the Pensacola City Council and the Escambia School Board, McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 12-15 (N.D. Fla. July 10, 1978). A larger number of blacks had run for those offices than had run for the County Commission. Accordingly, there may have been more of a basis for the court's findings of polarization in those elections than in elections for the County Commission. It appears that the court's finding of polarizaton in elections for the County Commission was based more on its interest in consistency than on the facts presented concerning County Commission elections.

This observation is applicable generally to other findings the court made. As reflected in the court's July 10, 1978 opinion, the evidence which was presented centered on the facts surrounding the creation and maintenance of the systems for electing persons to Escambia School Board and the Pensacola City Council, which have no bearing on the creation and maintenance of the system of electing county commissioners. In view of the absence of evidence of discriminatory intent in the County Commission aspect of this suit, it is evident that the district court did not review the facts, and make its finding of intent, independently of its findings on the School Board and City Council

otherwise.[110]

As to the remaining primary *Zimmer* factors, even the district court found the County Commission to be responsive to the needs of Escambia's black citizens, and race not to be a motivating factor behind Florida's adoption of the at-large election system.[111] Additionally, for the reasons discussed at 20-21 *supra,* race is not a factor behind the maintenance of the at-large system.

Because none of the primary *Zimmer* factors is present, there is nothing to be enhanced, and it should be unnecessary to consider the enhancing *Zimmer* factors. Even if considered, however, these factors add nothing to appellees' case; and, again, the facts are distinguishable from the facts in *Rogers.* In *Rogers* there was a majority vote requirement, no requirement that candidates run from geographic subdistricts and a finding that the size of Burke County impaired the access of blacks to the political process.[112] In the instant suit the district court recognized that there is no anti-single shot voting provision, no majority vote requirement in the general election, and a requirement that candidates reside in the district from which they run.[113] Although the court found Escambia to be geographically large, the court offered no explanation of this finding, particularly in the context of its impact on the ability of blacks to

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election systems. Rather, the court apparently applied the evidence concerning those elections systems to support its finding that the at-large system of electing county commissioners is being maintained for a discriminatory purpose.

[110]Under *Zimmer,* the fact that blacks are able to participate fully in the elector process obviates the need to discuss past discrimination.

[111]*Id.* at 15, 25. In *Rogers* the district court found that elected officials in Burke County were unresponsive to the needs of blacks and that the at-large election system had been subverted to invidious purposes. 102 S.Ct. at 3280.

[112]105 S.Ct. at 3274, 3280-81.

[113]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 18 (N.D.Fla. July 10, 1978).

participate in the political process.[114] That finding, therefore, is meaningless.

In sum, an aggregate of the *Zimmer* factors fails to support and, in fact contradicts, the district court's finding, and the Fifth Circuit's affirmance, that the at-large system of elections to the County Commission is being maintained for a discriminatory purpose. All that appellees have been able to show is that blacks have not been elected to the County Commission in proportion to their percentage of the population. Such a showing, however, provides an insufficient basis for striking down as violative of the fourteenth amendment an at-large election system.[115] This Court must not permit the Fifth Circuit to rewrite constitutional law to allow an at-large election system to be struck down where there is no evidence that it was established or is being maintained for discriminatory purposes.

II. The Imposition of a Court-Ordered System of Elections To Remedy a Defect Found To Be Present in an Existing Election System Is an Unwarranted Intrusion into a Legislative Function Where the Legislative Body Has the Power, Following a Decision Invalidating as Applied a State Constitutional Provision Requiring At-Large Elections, To Adopt a Remedy.

This Court consistently has held that the adoption of an election system is a legislative, not a judicial, function.[116] The

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[114] *Id.* It is noteworthy that Escambia is geographically smaller than a majority of counties in Florida. Of Florida's sixty-seven (67) counties, thirty-seven (37) are smaller than Escambia. Bureau of the Census, U.S. Dept. of Commerce, PC80-1-A11, 1980 Census of Population-Florida 8 (1982).

[115] *Bolden*, 446 U.S. at 666 (plurality opinion); White v. Regester, 412 U.S. 755, 765-66 (1973); Whitcomb v. Chavis, 403 U.S. 124, 149-50 (1971).

[116] Wise v. Lipscomb, 437 U.S. 535, 539-40, 550 (1978); Connor v. Finch, 431 U.S. 407, 414 (1977); Chapman v. Meier, 420 U.S. 1, 26-27 (1975); *see* Burns v. Richardson, 384 U.S. 73, 89 (1966).

courts below disregarded this teaching, and, rather than considering the election system the County Commission adopted and proposed to the district court, imposed a court-ordered system.

Underlying both courts' decisions was their interpretation of Fla. Const. art. VIII, § 1(f) and *Wise v. Lipscomb*. As noted at 16 n. 80 *supra*, the Fifth Circuit specifically concluded that the opinion of Justice White controlled the outcome of *Wise*, and, therefore, adopted its interpretation of Justice White's analysis as the governing standard for the instant suit.[117] Of particular significance was Justice White's observation that there was no state constitutional, statutory or judicial prohibition on the authority of the Dallas City Council to enact a new election system where its existing system had been held unconstitutional.[118] The courts below concluded that, unlike Texas law, Fla. Const. art. VIII, § 1(f) "expressly limits the legislative powers of the County Commission to those specifically authorized by state law," which does not include authorization for a non-charter county commission to adopt a remedial election system.[119] Even assuming that the courts were correct in adopting Justice White's analysis, the most cursory reading of the Florida Constitution and statutes conclusively establishes that the courts erred in holding that the powers of non-charter county commissions are limited to those enumerated by state law, and that, therefore, Florida law prohibits the County Commission from enacting a remedial election system.

The portion of Fla. Const. art. VIII, § 1(f) which governed the courts' holding is the language which provides: "Counties

[117]The district court indicated that it too adopted as controlling the analysis of Justice White. *See* McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 2-3 (N.D. Fla. Sept. 24, 1979).

[118]*McMillan III*, 688 F.2d at 972; *accord* McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 2 (N.D. Fla. Sept. 24, 1979).

[119]*McMillan III*, 688 F.2d at 972; *accord* McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 3 (N.D. Fla. Sept. 24, 1979).

not operating under county charters shall have such power of self-government as is provided by general or special law."[120] Both courts, however, ignored the remaining portion of that section, as well as the Florida statutes and a Florida Supreme Court decision on the powers of non-charter county governments. Specifically, Fla. Const. art. VIII, § 1(f) also provides that "[t]he board of county commissioners of a county not operating under a charter may enact . . . county ordinances *not inconsistent with* general or special law."[121] Florida statute provides: "The legislative and governing body of a county shall have the power to carry on county government. To the extent *not inconsistent with* general or special law, *this power* shall include, but *shall not be restricted* to . . . ."[122] As interpreted by the Florida Supreme Court,

> [t]his provision of the Florida Constitution [art. VIII, § 1(f)] also authorizes the board of county commissioners of such a county to enact ordinances in the manner prescribed by Chapter 125, Florida Statutes, which are not inconsistent with general law.
>
> The intent of the legislature in enacting the recent amendments to Chapter 125, Florida Statutes, was *to enlarge the powers of counties* through home rule to govern themselves.
>
> . . . Unless the legislature has preempted a particular subject relating to county government by either general or special law, the county governing

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[120]Both courts quoted Fla. Const. art. VIII, § 1(f). The district court, however, erroneously quoted this section as providing that "the Escambia County Commission has *'only* such power of self government [sic] as is provided by general or special law.'" McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 3 (N.D. Fla. Sept. 24, 1979) (emphasis added). This inaccurate quotation apparently was a major factor in the court's erroneous decision.

[121](Emphasis added).

[122]Fla Stat. § 125.01 (1981) (emphasis added).

> body, by reason of this sentence [in Fla. Stat. § 125.01] has authority to act through the exercise of home rule power.[123]

As is readily apparent, the powers of non-charter county commissions are expansive. Florida has not attempted to preempt the power of a non-charter county government to adopt by ordinance a remedial election system following a decision invalidating the State's constitutional provision requiring at-large elections. Therefore, even under Justice White's analysis in *Wise*,[124] the County Commission had the power to adopt by ordinance a remedial election system, and the Fifth Circuit should not have upheld the district court's intrusion upon this power.[125]

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[123]Speer v. Olson, 367 So.2d 207-11 (Fla. 1978) (emphasis added). The interpretation of state law by the highest court of a state is, of course, binding on this Court and all other federal courts. *E.g.*, Brown v. Ohio, 342 U.S. 161, 167 (1977); Gurley v. Rhoden, 421 U.S. 200, 208 (1975); Garner v. Louisiana, 368 U.S. 157, 169 (1961).

[124]Presumably, if the courts below had adopted the analysis in *Wise* of Justice Powell, they would have upheld the election system the County Commission adopted. That analysis was not dependent at all on whether a legislative body "became imbued" with the power to adopt an election system after the existing system was struck down. 437 U.S. at 548. Instead, Justice Powell focused on the fact that the Dallas City Council had "exercised a legislative judgment, reflecting the policy choices of the elected representatives of the people, rather than the remedial directive of a federal court." *Id.*

[125]The Fifth Circuit did not address specifically the issue of the reapportionment of the county commissioners' districts. However, the December 3, 1979 Order which the court affirmed in *McMillan III* provided for the immediate imposition of a court-ordered reapportionment plan and, thereafter, for the County Commission, following each decennial census, to reapportion the county commissioners' districts in accordance with the principle of one-person, one-vote and the orders of the court. The arguments which appellants have made with respect to the imposition by the courts of a judicially created election system would have applied even more forcefully with respect to the imposition of the court-ordered reapportionment plan because the Florida Constitution and statutes expressly provide county commis-

CONCLUSION

For the foregoing reasons, the questions are substantial, and the Court should note probable jurisdiction.

Respectfully submitted,

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sions with the power and duty to reapportion county commissioners' districts. Fla. Const. art. VIII, § 1(e); Fla. Stat. § 124.01 (1981).

Due to the fact that, prior to the decision in *McMillan III*, the Commerce Department published the 1980 census and that, as discussed at 15 *supra*, the County Commission reapportioned the county commissioners' districts, the judicially created reapportionment plan set forth in the December 3, 1979 Order will not be imposed. On remand the district court is at present determining whether or not to implement the County Commission's December 22, 1981 reapportionment plan, appellees' proposed plan or the court's proposed plan.

APPENDIX A

Decision on Rehearing of the Fifth Circuit in *McMillan v. Escambia County, Florida*, 688 F.2d 960 (5th Cir. 1982).

Henry T. McMILLAN et al.,
Plaintiff-Appellees,

v.

ESCAMBIA COUNTY, FLORIDA et al.,
Defendants-Appellants.

Nos. 78-3507, 80-5011.

United States Court of Appeals,
Fifth Circuit.*

Sept. 24, 1982.

Paula G. Drummond, Pensacola, Fla., for Escambia County.

Rhyne & Rhyne, Charles S. Rhyne, William S. Rhyne, Washington, D.C., for all defendants-appellants.

Don J. Canton, City Atty., Pensacola, Fla; for City of Pensacola.

Crawford, Blacksher, Figures & Brown, J.U. Blacksher, Larry Menefee, Mobile, Ala., Kent Spriggs,Tallahassee, Fla., Eric Schnapper, New York City, Edward Still, Birmingham, Ala., for plaintiffs-appellees.

Appeals from the United States District Court for the Northern District of Florida.

*Former Fifth Circuit case, Section 9(1) of Public Law 96-452 – October 14, 1980.

Before COLEMAN, PECK** and KRAVITCH, Circuit Judges.

ON PETITIONS FOR REHEARING

KRAVITCH, Circuit Judge:

Plaintiffs filed this class action in March 1977 challenging the at-large systems for electing Escambia's County Commissioners and School Board members. The case was consolidated with another class action suit challenging the election scheme for the Pensacola City Council. The district court held all three systems unconstitutional, and defendants in each case appealed. We affirmed the district court's decision as to the School Board and City Council, but reversed its holding as to the County Commission. *McMillan v. Escambia County,* 638 F.2d 1239 (5th Cir. 1981) (appeal on merits); *McMillan v. Escambia County,* 638 F.2d 1249 (5th Cir. 1981) (appeal on remedy); *Jenkins v. Pensacola,* 638 F.2d 1249 (5th Cir. 1981) (appeal on remedy). Plaintiffs sought rehearing of our decision as to the County Commission.[1] We reserved ruling on the petition for rehearing pending the United States Supreme Court's decision in a case raising similar issues. That case has now been decided. *See Rogers v. Lodge,* ____ U.S. ____, 102 S.Ct. 3272, 73 L.Ed.2d 1012 (1982). Having reviewed the Supreme Court's opinion in *Lodge,* we con-

**Honorable John W. Peck, U.S. Circuit Judge for the Sixth Circuit, sitting by designation.

[1]Neither the School Board nor the City Council sought rehearing. Instead those defendants, jointly with the plaintiffs, filed motions requesting issuance of the mandates, which we granted. Hence the constitutionality of the election systems for the School Board and City Council is not before us. (The City of Pensacola filed a petition for writ of certiorari to the Supreme Court. That petition, however, was subsequently dismissed on the City's own motion. *See City of Pensacola v. Jenkins,* 453 U.S. 946, 102 S.Ct. 17, 69 L.Ed.2d 1033 (1981).

clude that the standards it sets forth compel reversal of our prior decision. We therefore grant plaintiffs-appellees' motion for rehearing, vacate the portion of our original opinion concerning the County Commission, No. 78-3507, 638 F.2d 1239, vacate opinion No. 80-5011, 638 F.2d 1249, and substitute the following.

I.

Background

The five members of Escambia County's governing body, the Board of County Commissioners, are elected for staggered four-year terms in accordance with an at-large voting system. Under this system candidates run for numbered places corresponding to the districts in which they live, but each must be elected by the voters of the entire county. There is no majority-vote requirement for the general election, although candidates must obtain a majority of the votes cast in the party primaries to win party nomination.

As of the date of trial, four blacks had run for the County Commission, none of whom had been elected. Plaintiffs, representing black citizens of Escambia County, brought this action claiming that the county's at-large election scheme unconstitutionally[2] dilutes their votes.

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[2]Plaintiffs sought relief under the first, thirteenth, fourteenth, and fifteenth amendments to the Constitution, the Civil Rights Act of 1957, 42 U.S.C. § 1971(a)(1), the Voting Rights Act of 1965, *as amended in* 1975, 42 U.S.C. § 1973, and the Civil Rights Act of 1871, 42 U.S.C. § 1983. The district court held that the at-large system violated plaintiffs' rights under the fourteenth and fifteenth amendments and the Voting Rights Act of 1965, 42 U.S.C. § 1973, which was enacted to carry out the purpose of the fifteenth amendment. It rejected plaintiffs' § 1971(a)(1) claim because that statute "concerns

The district court found that blacks comprised seventeen percent of the registered voters in Escambia County and that in elections in which black candidates had run for the County Commission there had been a consistent pat-

itself only with entitlement to cast one's vote at elections, and such is not presented in this voting dilution suit." *McMillan v. Escambia County*, PCA No. 77-0432, slip op. at 34 (N.D. Fla. July 10, 1978). The court did not address plaintiffs' claims based on the first and thirteenth amendments.

The defendants appealed the district court's holdings under the fourteenth and fifteenth amendments and the Voting Rights Act. Having the benefit of the Supreme Court decision in *Mobile v. Bolden*, 446 U.S. 55, 110 S.Ct. 1490, 64 L.Ed.2d 47 (1980), *see* text *infra* at 4-5, we rejected plaintiffs' fifteenth amendment and Voting Rights Act claims in accordance with the *Bolden* plurality's view that vote-dilution claims are cognizable only under the fourteenth amendment. *McMillan v. Escambia County*, 638 F.2d at 1242-43 nn.8-9. The *Lodge* decision expresses no view on the applicability of the fifteenth amendment and Voting Rights Act to claims of this type, *Rogers v. Lodge*; ____U.S. at ____ n. 6, 102 S.Ct. at 3276 n. 6, and hence provides no basis for departing from the *Bolden* plurality's analysis. Congress' recent amendment to Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, encompasses a broader range of impediments to minorities' participation in the political process than those to which the *Bolden* plurality suggested the original provision was limited. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 3, 97th Cong., 2d Sess. (1982) (to be codified at 42 U.S.C. § 1973), *reprinted in* 51 U.S.L.W. 2 (1982); *see* S. Rep. No. 417, 97th Cong., 2d Sess. 2, 16, 28 & 30 n. 120 (1982), U.S. Code Cong. & Admin. News 1982, p. ____. The amendment also eliminates the requirement that plaintiffs demonstrate purposeful discrimination in the enactment or maintenance of the challenged voting system or practice. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205 § 3; S. Rep. No. 417, 97th Cong., 2d Sess. 2, 16 & 27-30. Appellees argue in their supplemental brief that we should reverse our prior decision and affirm the district court's holding that they are entitled to relief under the fifteenth amendment and the Voting Rights Act, as amended. While appellees have provided support for the proposition that the the amendment was intended to apply to pending litigation, *see* 128 Cong. Rec. H3841 (daily ed. June 23, 1982) (remarks of Rep. Sensenbrenner); *id.* at S7095 (daily ed. June 17, 1982) (remarks of Sen. Kennedy), and have presented a cogent argument that the amended Act

tern of racially polarized voting. The court found that the at-large system, coupled with the above factors, prevented black candidates from attaining a majority of the votes in the County Commission elections.[3] Having found that the at-large system had such discriminatory effect, the district court considered whether its purpose was

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entitles them to relief, we decline to address the fifteenth amendment and Voting Rights Act issues for the following reason. As a result of this litigation, elections for the Escambia County Commission have not been held since 1978. Pursuant to a stay of elections entered by this court in 1980, the elections schedules for that year and for 1982 were cancelled. Because the term of office for Escambia County Commissioner is four years, as of November 1982, none of the acting Commissioners will be serving pursuant to democratic election. Appellees have moved this court to dissolve the stay of elections so that "normal democratic processes" may proceed in Escambia County. Although appellees have briefed the fifteenth amendment and Voting Rights Act issues and discussed the effect of the 1982 amendment on this case, appellants have not yet been afforded opportunity to respond to appellees' argument. Accordingly, we could not render a decision on such issues without taking additional time to allow appellants to respond and possibly to schedule oral argument on these questions of first impression. *See* Rules 23(b), 24(a), Interim Rules of the United States Court of Appeals for the Eleventh Circuit, 28 U.S.C.A. (West Supp. 1982). Resolution of these issues could result in further delay and disruption of the electoral process in Escambia County. Moreover, our decision of these issues would not affect the outcome of this case because we hold, *infra*, that appellees are entitled to relief on their fourteenth amendment claim. Hence, we defer resolution of the Voting Rights Act and fifteenth amendment issues until a later day. The text of this opinion will be devoted to discussing the effect of *Lodge* on the fourteenth-amendment standards governing vote-dilution claims and the applicability of such standards to this case. *See McIntosh County Branch of the NAACP v. City of Darien*, 605 F.2d 753, 756 n.1 (5th Cir. 1980).

[3]Although there is no majority vote requirement for the general election, there is such a provision for the primary election. Moreover, the district court found that "as a practical matter, no one has in recent history won a general election without a majority." *McMillan v. Escambia County*, PCA No. 77-0432, slip op. at 18 (N.D. Fla. July 10, 1979).

discriminatory. Although the court found that the at-large system had not been enacted for a discriminatory purpose,[4] it concluded that the scheme had been maintained for such a purpose. In finding intentional discrimination, the court relied on a variety of factors, including the adverse effects of past discrimination by the state and county governments on blacks' exercise of their suffrage rights and participation in the political system, the unresponsiveness of elected County Commissioners to some needs of black citizens,[5] the depressed socio-economic status of blacks in the county, the tenuousness of the state policy behind the at-large system, and other features of the election system that enhanced its discriminatory effect. In addition to the above circumstantial or *Zimmer* evidence,[6] the district court found that the

[4]The at-large requirements of the general and primary elections for the County Commission are based on a 1901 amendment to the Florida Constitution. Fla. Const., art. 8, § 5. The district court found that the historical background of the amendment suggested racial motivation. Nonetheless, the court declined to find that such system was enacted for a discriminatory purpose because a prior decision of the Fifth Circuit had determined that there was no racial motivation behind the amendment and because the plaintiff's own expert had substantiated this view.

[5]Although the court found that the elected commissioners had generally been responsive to the needs of black citizens, it noted a lack of responsiveness in two areas. *See* note 16 *infra*.

[6]In *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd sub nom. East Carroll Parish School Bd. v. Marshall*, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1975) (per curiam), the former Fifth Circuit set forth a list of factors relevant to the determination whether multimember or at-large districting schemes are "rooted in racial discrimination." *Id.* at 1305. The factors mentioned by the court were:

> lack of access [by the minority] to the process of slating candidates, the unresponsiveness of legislators to their particularized interests, a tenuous state policy underlying the preference for multi-member or at-large districting, [ ] that the existence of past discrimination in general

County Commissioners' refusal to submit to voters a proposed referendum that would change the election system from at-large to single-member districts further supported a finding that the at-large system was being maintained for a discriminatory purpose.

The district court decided this case prior to the Supreme Court's decision in *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980). The district judge, however, apparently anticipated the holding of *Bolden* that discriminatory purpose is a required element of a vote-dilution claim under the fourteenth amendment.[7] He

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> precludes the effective participation in the election system,. . . the existence of large districts, majority vote requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographical subdistricts.

Id.

[7]At the time the district court was considering this case, the Supreme Court had decided two cases that foreshadowed the holding in *Bolden* that discriminatory intent is a required element of an equal protection based vote-dilution claim. In *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976), the Court held that a showing of disproportionate impact was not alone sufficient to support a claim of discrimination in employment under the fifth amendment. Instead, it held that discriminatory purpose is a required element of equal protection claims. In *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977) the Court applied the discriminatory intent requirement to a fourteenth amendment claim of racially discriminatory zoning. Language in both opinions suggested the intent requirement is applicable to other types of equal protection claims. *See Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. at 265, 97 S.Ct. at 563; *Washington v. Davis*, 426 U.S. at 239-41, 244-45, 96 S.Ct. at 2047-48, 2049-50. The district court relied on *Arlington Heights* and on the former Fifth Circuit decision in *Nevett v. Sides*, 571 F.2d 209 (1978), in holding that the plaintiffs were required to show discriminatory purpose as well as discriminatory impact. *McMillan v. Escambia County*, PCA No. 77-0432, slip op. at 22-23 (N.D. Fla. July 10, 1978).

therefore rendered findings on the issue of discriminatory purpose, which we found sufficiently explicit to preclude the necessity for a remand in light of *Bolden*. Instead of remanding the case for further findings, we reviewed the district court's findings to determine whether they reflected enough evidence of discriminatory purpose to meet the standard set forth in *Bolden*. Concluding that the district court's subsidiary findings were not adequate to support its ultimate finding of intent under the *Bolden* standard, we reversed the decision of the district court.

In *Bolden*, the Supreme Court reversed a decision of the former Fifth Circuit that had invalidated an at-large election system as unconstitutionally diluting blacks' voting power. The *Bolden* Court explicitly held that discriminatory purpose was a required element of a vote-dilution claim brought under the fourteenth amendment[8] and reversed the lower court decision on the ground that there was inadequate evidence that the election system had been enacted or maintained for a discriminatory purpose. No view by any of the Justices in *Bolden* commanded a majority. Hence in interpreting that decision to determine its effect on this case, we looked to the opinions of the plurality and concurring Justices and attempted to discern "the view with which a majority of the Court could agree." *McMillan v. Escambia County*, 638 F.2d at 1243.

At least five Justices agreed in *Bolden* that "discriminatory purpose of some sort must be proven" in vote-dilution cases. *Id.* Those Justices split on the stan-

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[8] *See* note 7 *supra*.

dard of proof for intent, however.[9] In view of the divergence between the Justices, we adopted Justice Stewart's opinion, which commanded the greatest number of votes. *See id.* Accordingly, we followed the plurality's directive that the *Zimmer* factors, which the Fifth Circuit had previously established as indicia of unconstitutional vote-dilution, *see* note 6 *supra,* are insufficient, standing alone, to support a finding of discriminatory purpose. *See Mobile v. Bolden,* 446 U.S. at 173, 100 S.Ct. at 1503 (plurality opinion).[10]

As noted above, the district court based its finding of intent mainly on *Zimmer* factors although it also considered the County Commissioners' refusal to submit to the electorate a proposal to change the election system to a single-member district scheme. We interpreted *Bolden* as holding that the *Zimmer* criteria could not adequately support a finding of intentional discrimination and therefore focused on the latter evidence cited by the district court in reviewing its finding of intent. After examining the record, we concluded the Commissioners' actions in rejecting the

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[9]*Compare Mobile v. Bolden,* 446 U.S. at 71-74, 100 S.Ct. at 1502-1503 (plurality opinion) *with id.* at 90-92, 100 S.Ct. at 1512-13 (Stevens, J. concurring in result). *See also id* at 80, 100 S.Ct. at 1507 (Blackmun, J., concurring in result); *id.* at 101-03, 100 S.Ct. at 1517-18 (White, J., dissenting).

[10]The plurality interpreted *Zimmer* as setting forth criteria relevant only to discriminatory *impact* and as holding that such impact was alone sufficient to establish an unconstitutional election system. *See Mobile v. Bolden,* 446 U.S. at 71, 100 S.Ct. at 1502 (plurality opinion). Justice White, who was of the view that sufficient evidence of discriminatory intent was present in *Bolden,* pointed out that the factors articulated in *Zimmer* were derived from prior Supreme Court vote-dilution cases and had been considered as circumstantial evidence of discriminatory purpose. *Id.* at 101, 100 S.Ct. at 1517 (White, J., dissenting).

proposed referendum provided insufficient evidence of intent to discriminate against blacks. We noted that the district court was entitled to discredit the Commissioners' testimony that there was no racial motivation behind their action but held that "disbelief of that testimony is not sufficient to support a contrary finding." *McMillan v. Escambia County,* 638 F.2d at 1245. Because the only other evidence of intent consisted of *Zimmer* factors, we reversed the district court's finding that the county election scheme was being maintained for a discriminatory purpose.

II.

Effect of Rogers v. Lodge *on Our Decision That Plaintiffs Failed to Establish Unconstitutionality of Escambia County Commission Election System*

As we noted in our prior opinion, the *Bolden* Court's divergent analyses on the intentional discrimination issue left us somewhat "adrift on uncharted seas with respect to how to proceed." *Id.* at 1242 (quoting *Mobile v. Bolden,* 446 U.S. at 103, 100 S.Ct. at 1518 (White, J., dissenting)). In the more recent decision of *Rogers v. Lodge,* ____ U.S. ____, 102 S.Ct. 3272, 73 L.Ed.2d 1012 (1982), the Supreme Court substantially clarified the constitutional standard governing vote-dilution claims. The *Lodge* opinion, which garnered a majority of the Justices,[11] reaffirmed the holding of *Bolden* that evidence of purposeful discrimination is required to sustain an equal protection

[11]The *Lodge* majority comprised the three Justices who dissented in *Bolden* (Justices White, Brennan, and Marshall), Justice O'Connor, who joined the Court after *Bolden* was decided, and Chief Justice Burger, who voted with the plurality in *Bolden.*

challenge to an election system. *Id.* at ____, 102 S.Ct. at 3275. The majority's analysis of the standard governing the type and amount of evidence necessary to show discriminatory intent, however, reflects both a more favorable view of the *Zimmer* factors and a greater deference to the finding of the district court than the analysis of the *Bolden* plurality.

Although the district court in *Lodge* had relied primarily on the *Zimmer* factors in finding purposeful discrimination, the Supreme Court rejected the argument that the decision was infirm under *Bolden*. Rather, the Court held that the district court had applied the proper legal standard. It noted that the district court's decision had been "rendered a considerable time after *Washington v. Davis* and *Arlington Heights*" and that "the trial judge also had the benefit of *Nevett v. Sides*," 571 F.2d 209 (5th Cir. 1978), which applied the discriminatory intent standard of the above cases to a vote-dilution claim (*see* note 6 *supra*). *Rogers v. Lodge*, ____ U.S. at ____, 102 S.Ct. at 3276. Moreover, the district court had explicitly recognized the discriminatory intent requirement and had been aware that *Zimmer* factors were not exclusive or absolute but simply "were relevant to the question of discriminatory intent." *Id.* The Court also declined to "disturb the District Court's finding that the at-large system in Burke County was being maintained for the invidious purpose of diluting the voting strength of the black population." *Id.* at ____, 102 S.Ct. at 3278. The Court's opinion requires appellate courts to defer to district courts' factual findings on intent because such findings "represent[ ] . . . a blend of history and an intensely local appraisal of the design and impact of the [election system at issue] in light of past and present reality, political and otherwise." *Id.* at ____-____, 102 S.Ct. at 3278 (quoting *White v. Regester*, 412 U.S. 755,

769-70, 93 S.Ct. 2332, 2341, 37 L.Ed.2d 314 (1973)). The Court thus applied the clearly erroneous standard of Fed. R. Civ. P. 52 to the district court's finding of discriminatory intent. *Id.* (citing *Pullman-Standard v. Swint*, ____ U.S. ____, 102 S.Ct. 1781, 72 L.Ed.2d 66 (1982) (applying Rule 52 to finding of intent in employment discrimination suit)).

A. *Did Court Below Apply Correct Constitutional Standard?*

[1] Applying the analysis adopted by the *Lodge* majority to this case, we consider first whether the district court applied the proper fourteenth amendment standard to appellee's vote-dilution claim. As we noted in our original opinion, *McMillan v. Escambia County*, 638 F.2d at 1243, "the district court below correctly anticipated that the *Arlington Heights* requirement of purposeful discrimination must be met." Indeed, the district court expressly recognized that

> [a]n at-large election system which operates to dilute the vote of black citizens is not necessarily violative of the Constitution. It must also be shown that discriminatory intent was a motivating factor in the enactment of the system or is a motivation in the present maintenance of the system.

McMillan v. Escambia County, PCA No. 77-0432, slip op. at 22-23 (N.D. Fla. July 10, 1978). As in *Lodge*, the district court in this case had the benefit of *Nevett v. Sides*, *supra*. The court below relied on *Nevett* in holding that "[i]nvidious purposes in the maintenance of the system are proved by the circumstances surrounding the operation of the system and may be inferred from findings under the

Zimmer factors." *McMillan v. Escambia County,* PCA No. 77-0432, slip op. at 23 (N.D. Fla. July 10, 1978) (citing *Nevett v. Sides,* 571 F.2d at 222). The district court's consideration of the Commissioners' response to the single-member district proposal of the charter committees indicates that the court did not view the *Zimmer* factors as the exclusive criteria for determining discriminatory purpose. Rather, the court inferred from the Commissioners' action, together with the aggregate of the findings under the *Zimmer* factors, that the at-large system was being maintained for invidious purposes. *See McMillan v. Escambia County,* PCA No. 77-0432, slip op. at 19, 21 & n. 6, 29-31 (N.D. Fla. July 10, 1978). *Compare id. with Rogers v. Lodge,* ____ U.S. at ____, 102 S.Ct. at 3276, 3279-80. The district court's heavy reliance on *Zimmer* criteria as circumstantial evidence of intent to discriminate, while at odds with our interpretation of the standard for proving intent under *Bolden, see* text *supra* at 4-5, is fully consistent with the analysis adopted by a majority of the Supreme Court in *Lodge.* Hence, we conclude the court below applied the correct legal standard to this case.

B. *Was District Court's Finding of Intentional Discrimination Clearly Erroneous?*

[2] In light of the *Lodge* Court's reaffirmation of the validity of the *Zimmer* criteria as circumstantial evidence of intent, we now conclude that the district court's finding of intent in this case – though based largely on the *Zimmer* factors – was not clearly erroneous.

The district court found that blacks constitute twenty percent of the population and seventeen percent of the registered voters of Escambia County. Although black

citizens had run for County Commission on four occasions, no black candidate had ever won an election. None of the blacks who ran was able to obtain the majority of votes necessary to win the Democratic primary. The court found that in each of the races in which a black candidate ran for County Commission the voting had been severely polarized along racial lines.[12] In other words, "whenever a black challenges a white for countywide office, a consistent majority of the whites who vote will consistently vote for the black's opponent.[13] The court found that the numerical minority of blacks coupled with the white bloc vote prevented blacks from attaining a majority of votes in the county. Although the Supreme Court has consistently maintained that racially polarized voting and inability of a minority group to obtain legislative seats in proportion to its voting potential are not alone sufficient to prove that a multimember or at-large districting scheme is being used invidiously to minimize the voting strength of the minority

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[12]The R^2 coefficient, which reflects the percentage of variation in the vote attributable to the race of the registered voters in the races in which black candidates ran, ranged from .85 to .98. *McMillan v. Escambia County*, PCA No. 77-0432, Appendix A (N.D. Fla. July 10, 1978). The district court's findings concerning racially polarized voting in Escambia County elections are set forth in full in our original opinion. *McMillan v. Escambia County*, 638 F.2d at 1241-42 n.6.

[13]The district court noted that in the one countywide election in which a black candidate ran unopposed in the Democratic primary, that candidate lost the general election to a white Republican candidate. That election, which was a race for a position on the County School Board, was the first "in the modern history of Escambia County [in which] a Republican had won any countywide office." *McMillan v. Escambia County*, PCA No. 77-0432, slip op. at 11 (N.D. Fla. July 10, 1978). Moreover, the Republican candidate received 22,523 votes despite a total Republican registration in the County of only 7,268; whereas in a prior election in which the same Republican had run against a white Democrat, he had received only 10,721 votes.

group, *e.g.*, *Rogers v. Lodge*, ____ U.S. at ____, 102 S.Ct. at 3279; *White v. Regester*, 412 U.S. 755, 765-66, 93 S.Ct. 2332, 2339-40, 37 L.Ed.2d 314 (1973); *Whitcomb v. Chavis*, 403 U.S. 124, 149-50, 91 S.Ct. 1858, 1872, 29 L.Ed.2d 363 (1971), it has recognized that such facts "bear heavily on the issue of purposeful discrimination." *Rogers v. Lodge*, ____ U.S. at ____, 102 S.Ct. at 3279.[14]

[14]As the Court stated:

> Voting along racial lines allows those elected to ignore black interests without fear of political consequences, and without bloc voting the minority candidates would not lose elections solely because of their race. Because it is sensible to expect that at least some blacks would have been elected in Burke County, the fact that none have ever been elected is important evidence of purposeful exclusion.

Rogers v. Lodge, ____U.S. at____, 102 S.Ct. at 3279.

Appellants argue that the facts in this case distinguish it from *Lodge* because blacks comprise only 23% of the population and 17% of the registered voters in Escambia County, whereas they made up a majority of the population and 38% of the registered voters in Burke County. Appellants contend that the Supreme Court's assessment in *Lodge* that some blacks likely would have been elected in Burke County had the voting not occurred along racial lines does not hold true in Escambia County, where blacks constitute only a minority of the county's voting population. Appellants misunderstand the question at issue, however. The Supreme Court's premise is that "without bloc voting the minority candidates would not lose elections solely because of their race." *Id.* Not accounting for other variables, elections would be expected to produce a ratio of successful black and white candidates corresponding roughly to the respective percentages of the population comprised by each race. Under this analysis, blacks should have attained office in roughly 40% of the elections in Burke County, whereas in Escambia County the projection would be closer to 20%. Of course, this analysis omits many factors other than race that could result in a lower proportion of successful black candidates. Certainly some degree of deviation from proportionality to population would neither be unusual nor indicative of intentional discrimination in the election system. Here, as in *Lodge* however, the deviation is substantial; no black has ever served as Commissioner in Escambia County. Although the number of blacks that reasonably could be expected to

As in *Lodge*, the district court below also considered the impact of past discrimination on the ability of blacks to participate in the political process. It found that the County Commission and School Board election systems "had their genesis in the midst of a concerted state effort to institutionalize white supremacy." *McMillan v. Escambia County*, PCA No. 77-0432, slip op. at 4 (N.D. Fla. July 10, 1978). Prior to 1901, County Commissioners were appointed by the governor, and the court found that "appointment was favored over election to ensure against the possibility that blacks might be elected in majority black counties." *Id.* In 1889, Florida instituted a poll tax to disenfranchise blacks. The court found that although the tax was of limited success, "enough blacks were disenfranchised to permit the state to allow at-large election of county commissioners." *Id.* at 5. The court found that enactment of Jim Crow laws and exclusion of blacks from the Democratic Party, beginning in 1900, further impeded black participation in the electoral process. In 1907, Florida enacted a law providing for primary elections of County Commissioners in which candidates were elected from single-member districts. 1907 Fla. Laws, ch. 5697, § 1. The district court found that the anomaly between the

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hold office in Escambia County elections is smaller than that in Burke County, it is as sensible in this case as it was in *Lodge* to expect that "at least some blacks would have been elected" absent racially polarized voting.

Finally, we emphasize our understanding of the limited role of evidence of racially polarized voting and lack of success by minority candidates. Such facts are reflective of the dilutive effect of an election system and, circumstantially, of intent to cause that effect. They are "insufficient in themselves to prove purposeful discrimination," however, "absent other evidence such as proof that blacks have less opportunity to participate in the political processes and to elect candidates of their choice." *Id.*

white, districted primary elections and the at-large general elections uniquely disadvantaged blacks: "Since blacks could not vote in the Democratic Primary district elections, they were forced to challenge white Democratic nominees in at-large elections in which blacks had no voter majorities. In effect, the white primary was the election." *McMillan v. Escambia County,* PCA No. 77-0432, slip op. at 5 (N.D. Fla. July 10, 1978). The Florida Supreme Court invalidated this dual system in 1945, and at-large voting was instituted in the primaries several years later.

The district court found that there are no longer any slating organizations that prevent blacks from participating in the election of County Commissioners nor direct impediments to blacks' registration and voting. The court found "no significant difference" currently existing between black and white voter registration. *Id.* at 6. Nonetheless, it concluded that "other barriers . . . effectively operate to preclude access for blacks." The court cited the consistent inability of blacks to win elections and a $1000 filing fee required of candidates for County Commission as factors that had discouraged blacks from running, with the result that the number of blacks seeking countywide office in recent years was "far lower than one would expect based on their percentage of the population." *Id.* at 10. Indeed, the court found that because of these impediments no blacks had run for County Commission since 1970. *Id.*

As additional evidence of exclusion of blacks from the political process, the district court noted that state-enforced segregation has created two separate societies in Escambia County. Churches, clubs, neighborhoods, and until recently, schools in the county have remained segregated by race. The court found that this "continued

separation [of blacks] from the dominant white society" not only has "left blacks in an inferior social and economic position, with generally inferior education," but has also "helped reduce black voting strength and participation in government." *Id.* at 17. Specifically, the court found that the segregation of black and white citizens had helped create bloc voting and resulted in white candidates' failure to arouse interest among blacks[15] and in city and county governing bodies' failure to appoint blacks to governmental advisory committees and boards.[16]

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[15]The court found that black voters have shown a consistent, nearly unanimous preference for black candidates in races in which blacks have run. *McMillan v. Escambia County*, PCA No. 77-0432, slip op. at 13, 20-22 (N.D. Fla. July 10, 1978). Although white candidates actively seek the votes of blacks, studies of voter turnouts indicated that when whites run against whites black voter turnout is significantly lower than when black candidates run for office. *Id.* at 13 & n. 4, 15. These facts indicate that "blacks view the choice of white candidates as irrelevant to their interests." *Id.* at 15.

[16]Although the court found that the commissioners had generally been responsive to the interests of black citizens, it noted two areas in which they had not. It found that "[t]he commissioners have failed to appoint any more than a token number of blacks to its committees and boards. The black population representing 20% of the county is thus served by an all-white board of commissioners which depends on virtually (95%) all-white advisory panels." *McMillan v. Escambia County*, PCA No. 77-0432, slip op. at 15 (N.D. Fla. July 10, 1978). The court found the "severe underrepresent[ation]" of blacks on county committees "has independent significance because of the absence of or near absence of blacks in elected positions. With such a paucity of black elected and appointed representatives, blacks are excluded from all positions of responsibility in the governmental policymaking machinery." *Id.* at 21. The court noted the former city mayor's explanation of this failure as resulting from the relative nonvisibility to him of black citizens as compared with whites. A former city council member had referred to the black and white communities as the "black and white 'sides of the fence.' " *Id.* at 17.

Appellants argue that this case is distinguishable from *Lodge* because the district court in *Lodge* found extensive evidence of unresponsiveness by elected officials to the needs of blacks whereas

The district court found the policy behind the at-large system for electing County Commissioners tenuous. It noted that although the at-large system had been in effect for the general election since 1901, during most of that period a single-district system was employed in the Democratic primaries, which were then tantamount to election.[17] Hence despite the state constitutional requirement of at-large elections, the effect of this dual election system was "to ensure that commissioners were elected

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here the court found, with the above-noted exceptions, that the Escambia County Commissioners had generally been responsive to the needs of black citizens. *Compare Rogers v. Lodge*, ___U.S. at ___, 102 S.Ct. at 3279, *with McMillan v. Escambia County*, PCA No. 77-0432, slip op. at 15 (N.D. Fla. July 10, 1978). Moreover, appellants argue that the district court's finding that white candidates in Escambia County actively seek the votes of black citizens precludes a finding of discriminatory intent. We addressed these arguments in our original opinion, *McMillan v. Escambia County*, 638 F.2d at 1248-49, and concluded that once discriminatory intent has been shown responsiveness is irrelevant. The Fifth Circuit panel in the *Lodge* case subsequently reached the opposite conclusion, holding that proof of unresponsiveness is an essential element of a fourteenth amendment vote-dilution claim. *Lodge v. Buxton*, 639 F.2d 1358, 1374-75 (5th Cir. 1981). The Supreme Court resolved the issue in its opinion in *Lodge*. It held that unresponsiveness, while an important factor to be considered in determining whether discriminatory purpose may be inferred, is not essential to prove such purpose. *Rogers v. Lodge*, ___ U.S. at ___ n. 9, 102 S.Ct. at 3280 n. 9. In view of the Supreme Court's holding, we do not consider the district court's finding that Escambia County Commissioners were responsive to black citizens' needs in most areas conclusive on the question of discriminatory intent.

[17]The Florida Supreme Court invalidated the white primary in 1945. *Davis v. State ex rel. Cromwell*, 156 Fla. 181, 23 So.2d 85 (1945). County commissioners continued to be nominated through single-member district primaries until 1954, when the Florida court held that the anomaly between the single-member district primaries and the at-large general election violated the state constitution. *Ervin v. Richardson*, 70 So.2d 585 (Fla. 1954).

from single-member districts." *Id.* at 24.[18] Several County Commissioners explained the policy behind maintaining the at-large system as rooted in the belief that such system made each Commissioner responsive to the needs of the whole community rather than to a particular district. The district court found this explanation inconsistent with the present operation of the Commission, however. In particular, the court noted that "the residence district of each commissioner is more or less regarded as the district of that commissioner for which he has responsibility and for whose needs he is the particular advocate on the commission." *Id.* at 30.[19]

Finally, the district court considered the so-called "enhancing factors" that the courts have recognized as increasing the tendency of a multimember or at-large elec-

[18]The court found evidence indicating racial motivation behind the 1901 amendment establishing the present at-large system, but declined to depart from the finding in a prior case that the amendment was not enacted for discriminatory purposes. *See McGill v. Gadsden County,* 535 F.2d 277 (5th Cir. 1976).

[19]Appellants asserted in the trial court that the Commissioners' rejection of the single-member district proposal reflected a desire to maintain their own incumbency. We stated in our original opinion that a motive to exclude all other potential candidates could not, absent other evidence, be equated with a desire to exclude blacks in particular. *See McMillan v. Escambia County,* 638 F.2d at 1245. Of course, neither can incumbent legislators' desire to remain in office justify or legitimate an election scheme that is purposefully discriminatory. *Cf. Rogers v. Lodge,* ____ U.S. at ____, 102 S.Ct. at 3287 (Stevens, J., concurring) (features of election system that dilute minority voting power are invalid if only purpose they serve is to perpetuate power of entrenched majority). In reversing our prior decision and affirming the district court's finding of intent we do not depart from our prior conclusion that desire to maintain incumbency does not equal racially discriminatory intent. Our affirmance simply reflects consideration of a broader range of evidence than we previously understood could be used to support a finding of discriminatory purpose. *See* text *supra* at 963-965.

tion system to dilute blacks' voting strength. *See Rogers v. Lodge,* ____ U.S. at ____, 102 S.Ct. 3281; *Zimmer v. McKeithen,* 485 F.2d at 1305. The lower court found that the large population and geographical size of the county, the majority-vote requirement for the primary election, and the requirement that candidates run for numbered places[20] enhanced "the problems faced by blacks seeking access to the political processes." *McMillan v. Escambia County,* PCA No. 77-0432, slip op. a 18, 19 (N.D. Fla. July 10, 1978).

On the basis of the above findings, the district court concluded:

> To this court the reasonable inference to be drawn from [the Commissioners'] actions in retaining at-large districts is that they were motivated, at least in part, by the possibility single district elections might result in one or more of them being displaced in subsequent elections by blacks.
>
> This conclusion is bolstered by the findings under the *Zimmer* factors that black voting preferences for blacks cannot be registered in the present system and black candidates are otherwise denied access to that system.

Id. at 31. The evidence in the record fully supports the district court's subsidiary findings. The court relied on the aggregate of these findings involving *Zimmer* factors and other evidence in determining that the at-large system in

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[20]The court found that this requirement had the effect "that blacks are always pitted in head-on-head races with white candidates, and that the black community cannot concentrate its votes in a large field of candidates." *McMillan v. Escambia County,* PCA No. 77-0432, slip op. at 18 (N.D. Fla. July 10, 1978).

Escambia County is being maintained for discriminatory purposes. Applying the standard enunciated by the Supreme Court in *Lodge*, we cannot say the district court's finding of intent was clearly erroneous.

III.

Validity of Remedy Prescribed by District Court

Having invalidated the election system for the Escambia County Commission, the district judge ordered the parties to submit proposals for a remedy to rectify the constitutional defect. The defendant-County Commissioners submitted a plan, which they had adopted by ordinance, providing for a mixed single-member district and at-large scheme.[21] A proposal for a new charter government under which Commissioners would be elected by a system similar to that proposed by defendant-Commissioners[22] was then pending submission to the voters of Escambia County in a referendum election. Defendants requested that the district court adopt this mixed system as the remedial plan of the court.

The Supreme Court cases addressing remedies for unconstitutional vote dilution have distinguished between judicially imposed and legislatively adopted plans. The

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[21]Defendants' proposal would establish a seven-member Board of County Commissioners with five Commissioners to be elected from single-member districts and two to be elected by the voters of the county at large.

[22]The difference between the Commissioners' proposal and the ballot proposition was that the former included an apportionment plan whereas the latter entrusted the establishment of district boundaries to a reapportionment commission.

Court has generally disapproved of multimember district and at-large election schemes as components of a judicially fashioned remedy and has admonished district courts to employ single-member districts. *Connor v. Finch,* 431 U.S. 407, 414-15, 97 S.Ct. 1828, 1833-34, 52 L.Ed.2d 465 (1977); *East Carroll Parish School Board v. Marshall,* 424 U.S. 636, 639, 96 S.Ct. 1083, 1085, 47 L.Ed.2d 296 (1976); *Connor v. Johnson,* 402 U.S. 690, 692, 91 S.Ct. 1760, 1762, 29 L.Ed.2d 268 (1971). *See also Rogers v. Lodge,* ____ U.S. ____, ____, 102 S.Ct. 3272, 3281, 73 L.Ed.2d 1012 (1982). In *Wise v. Lipscomb,* 437 U.S. 535, 98 S.Ct. 2493, 57 L.Ed.2d 411 (1978), however, the Court suggested that greater deference will be accorded to legislatively adopted reapportionment plans than to remedies devised by district courts. Legislative plans thus are not limited to the strict single-member district requirement that applies to judicial reapportionment. *Id.* at 540-41, 98 S.Ct. at 2497-98. *See Chapman v. Meier,* 420 U.S. 1, 18, 27, 95 S.Ct. 751, 761, 766, 42 L.Ed.2d 766 (1975).

Because the election scheme proposed by defendants was not a pure single-member district system, the district court addressed whether the proposal should be treated as a legislatively adopted or judicially imposed plan. The court found that the voters of Escambia County were authorized under the Florida Constitution to reapportion the county by referendum. Hence, it concluded that if the voters adopted the proposed new charter, the court should treat the reapportionment scheme as a legislatively adopted plan. The court held, however, that the Commission was without authority under state law to enact such a system, and that in the event the referendum was not passed by the voters of the county the Commission's ordinance adopting essentially the same apportionment system could not be treated as a legislatively adopted plan.

On November 6, 1979, the voters of Escambia County rejected the proposed charter government. Having determined that only the voters, and not the Commission, could enact a reapportionment scheme, the district court concluded that a judicially imposed plan was required. It held that

> [u]nder the authorities before the court, a judicially devised plan must require total use of single member districts unless persuasive justification to the contrary exists. No such persuasive justification is here established. Because of that, the plan heretofore submitted by the county commission of Escambia County must be disapproved by this court.

McMillan v. Escambia County, PCA No. 77-0432, slip op. at 3 (N.D. Fla. Sept. 24, 1979). The court adopted a plan reapportioning Escambia County into five single-member districts and providing for elections of all members of the County Commission in 1980.[23]

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[23]The plan adopted by the district court preserves the staggered terms feature of the current Commission by providing for three of the new Commissioners to serve four-year terms and two of the new Commissioners to serve two-year terms. Thereafter all Commissioners would be elected for four-year terms. The defendants objected to holding elections for all five Commission positions at once and requested that the single-member plan be "phased-in" by permitting two of the Commissioners then serving to remain in office until 1982 — the expiration period for their terms. Defendants' argued that such procedure would minimize the disruption resulting from turnover on the Commission and allow the two Commissioners whose terms were unexpired to serve the full period to which they were entitled to be in office. The district court rejected this proposal on the ground that "where a governing authority is found to be holding office by virtue of an election scheme which is constitutionally infirm, a court, under its equitable authority, should take steps to correct such defects at the earliest possible date." Moreover, the court found that leaving two at-

Defendants appealed from the district court's decision on the remedy. They argued that the Commission was not prohibited by state law from enacting a reapportionment scheme and that the Commission's proposal should be treated as a legislatively adopted plan irrespective of the voters' rejection of the measure in the referendum election. We initially reversed the district court's relief order because we had reversed its decision on the merits concerning the constitutionality of the Escambia County election system. *McMillan v. Escambia County*, 638 F.2d 1249 (5th Cir. 1981). Because we have reversed our own prior decision on the merits, we must now address the validity of the relief ordered by the district court. We agree with the district court's analysis of the remedy issue and accordingly affirm.

The district court based its determination that the Commission was unauthorized to enact a reapportionment scheme on the Florida Constitution. Article VIII, section 1 of the Florida Constitution provides for two types of county governments: (1) government established by charter, which may be adopted or amended "only upon vote of the electors of the county in a special election called for that purpose," Fla. Const. art. VIII, § 1(c); or (2) noncharter government consisting of a five-member board of commissioners elected at-large, *id.* § 1(e). The legislative powers of noncharter governments are expressly

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large Commissioners in office would temporarily give some citizens greater representation than others. We need not decide whether the district court abused its discretion in rejecting defendants' proposed "phased-in" version of the court's remedial plan. The passage of time since the district court rendered its decision has essentially eliminated the objections defendants raised; none of the Commissioners currently in office will be serving pursuant to his elected term by the time elections under the court's apportionment scheme are held.

limited to those "provided by general or special law," *id.* § 1(f), whereas charter governments "have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors," *id.* § 1(g). The Escambia County Commission is a noncharter government, and thus its legislative powers encompass only those specifically provided by state law. Defendants cite no state law empowering the Commission to reapportion itself, but contend that, under the analysis of *Wise v. Lipscomb, supra,* the Commission is implicitly vested with power to reapportion when the existing apportionment scheme has been held unconstitutional. We reject this argument because we are of the view that the district court correctly distinguished this case from *Wise.*

In *Wise* the Dallas City Council adopted a reapportionment scheme with a combination of single-member and at-large districts in response to a declaratory judgment by a federal district court holding the existing at-large scheme unconstitutional. *Wise v. Lipscomb,* 437 U.S. at 538, 98 S.Ct. at 2496. The at-large system had been established by city charter, which under Texas law could be amended only by referendum. *Id.* at 544, 98 S.Ct. at 2499. Despite the absence of an express grant of legislative power to the City Council to change the election system, the Supreme Court upheld the system as a valid legislatively enacted plan. *Id.* at 539-46, 98 S.Ct. at 2496-2500 (White and Stewart, JJ.); *id.* at 547-49, 98 S.Ct. at 2500-01 (Powell, Blackmun, and Rehnquist, JJ. and Burger, C.J., concurring in part and concurring in the judgment). Although six members of the Court agreed that the plan was legislatively rather than judicially imposed, the Justices did not agree on the analysis leading to that conclusion. The opinion of Justice White, concurred in by Justice Stewart, indicates that only those election schemes adopted by a

governing body pursuant to its valid legislative powers will be treated as legislative plans. *Id.* at 544-46, 98 S.Ct. at 2499-500. Justices White and Stewart stated that the Dallas City Council plan met this requirement because "[a]lthough the Council itself had no power to change the at-large system as long as the Charter provision remained intact, once the Charter provision was declared unconstitutional, and in effect, null and void, the Council was free to exercise its legislative powers which it did by enacting the [combined at-large and single-member district] plan." *Id.* at 544, 98 S.Ct. at 2499. The opinion specifically notes, however, that "[t]he record suggests no statutory, state constitutional, or judicial prohibition upon the authority of the City Council to enact a municipal election plan under circumstances such as this and respondents have been unable to cite any support for its [sic] contention that the City Council exceeded its authority." *Id.* n. 8, 98 S.Ct. 2499 n. 8. Justices Powell, Blackmun, and Rehnquist and Chief Justice Burger declined to adopt the legislative powers analysis articulated by Justice White. Instead they viewed the "essential point" in distinguishing legislatively from judicially imposed plans "that the Dallas City Council exercised a legislative judgment, reflecting the policy choices of the elected representatives of the people, rather than the remedial directive of a federal court." *Id.* at 548, 98 S.Ct. at 2501 (Powell, Blackmun, and Rehnquist, JJ. and Burger, C.J., concurring in part and concurring in the judgment). In the view of these Justices, the "rule of deference to local legislative judgments remains in force even if, . . . our examination of state law suggests that the local body lacks authority to reapportion itself." *Id.* Justice Marshall, joined by Justices Brennan and Stevens, dissented. These Justices agreed with Justices White and Stewart that only election systems adopted by a govern-

mental body pursuant to its valid legislative authority should be treated as legislative plans. *Id.* at 550, 98 S.Ct. at 2502 (Marshall, Brennan, and Stevens, JJ., dissenting). The dissenting Justices were of the view, however, that the Dallas plan "was not devised by the City Council in the usual course of its legislative responsibilities" but was "proposed as less a matter of legislative judgment than as a response by a party litigant to the court's invitation to aid in devising a plan." *Id.* at 552, 98 S.Ct. at 2503.

[3] Because the analysis of Justices White and Stewart effectively controlled the outcome of the *Wise* case,[24] we adopt it as the governing standard for determining when an election system proposed in response to a finding of vote-dilution should be treated as a legislatively rather than judicially imposed plan.[25] Applying that analysis to this case, we conclude that the plan proposed by defendant-Escambia County Commissioners does not meet the requirements for a legislatively adopted plan. The facts here are similar to those in *Wise* in that the only

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[24]Justices White and Stewart adopted a standard for legislative plans that was more stringent than that stated by the other four concurring Justices, but less stringent than that articulated by the three dissenting Justices.

[25]In *Marshall v. Edwards*, 582 F.2d 927, 932-33 (5th Cir. 1978), Judge Wisdom extracted the major points from each of the three relevant opinions in *Wise* and considered all of them in deciding whether the plan at issue was court-ordered or legislative in nature. As we noted in a later case, the facts in *Marshall* indicated a court-ordered plan under any of the Justices' analyses. *Jenkins v. City of Pensacola*, 638 F.2d 1249, 1252 (5th Cir. 1981). In *Jenkins* we found that the considerations in the opinions of Justices White and Powell pointed in both directions, but concluded that "[o]n balance" the plan was "better viewed as a legislative plan." *Id.* In this case, however, we are presented with a fact situation that under Justice White's analysis points to a court-imposed plan, but under Justice Powell's analysis would be considered a legislative plan. Hence we are forced to decide which of the two approaches we should follow.

method authorized by state law for adopting a county election system that is not at-large is for the voters of the county to approve such a system by referendum. *See* text *supra* at 17. Unlike the Texas Constitution, however, the Florida Constitution expressly limits the legislative powers of the County Commission to those specifically authorized by state law. Hence, as the district court found, the Commission does not possess the legislative authority to reapportion itself even where the existing apportionment scheme has been held unconstitutional. On this ground, the district court correctly held that a judicially devised plan was necessary.

[4] Finally, we hold that the remedial plan adopted by the district court was fully within its discretion. *See East Carroll Parish School Board v. Marshall,* 424 U.S. 636, 638-40, 96 S.Ct. 1083, 1084-85, 47 L.Ed.2d 296 (1976). *Cf. Chapman v. Meier,* 420 U.S. 1, 26-27, 95 S.Ct. 751, 765-66, 42 L.Ed.2d 766(1975)(court-ordered plans held to higher standards than legislatively adopted plans); *Corder v. Kirksey,* 585 F.2d 708, 713-15 (5th Cir. 1978)(mixed scheme composed of both single-member districts and at-large seats required justification).

IV.

For the reasons stated above, we AFFIRM the district court's holding that the election system for the Escambia County Commission violates the fourteenth amendment. We also AFFIRM the remedial plan adopted by the court. In view of the passage of time since the district court issued its remedial order, we REMAND this case to the court below with instructions to revise the scheduling terms of its remedial order accordingly.

APPENDIX B

Related Decisions.

1. Decision of the Fifth Circuit in *McMillan v. Escambia County, Florida*, 638 F.2d 1239 (5th Cir. 1981).

Henry T. McMILLAN et al.,
Plaintiffs-Appellees,

v.

ESCAMBIA COUNTY, FLORIDA et al.,
Defendants-Appellants.

Elmer JENKINS et al.,
Plaintiffs-Appellees,

v.

CITY OF PENSACOLA et al.,
Defendants-Appellants.

No. 78-3507.

United States Court of Appeals,
Fifth Circuit.

Feb. 19, 1981.

Richard I. Lott, County Atty., John W. Flemming, Asst. County Atty., Pensacola, Fla., for Escambia County.

Ray, Patterson & Kievit, Pensacola, Fla., for School Board.

Charles S. Rhyne, William S. Rhyne, Washington, D.C., for all defendants-appellants.

Don J. Canton, City Atty., Pensacola, Fla., for City of Pensacola.

J.U. Blacksher, Larry Menefee, Mobile, Ala., Kent Spriggs, Tallahassee, Fla., Jack Greenberg, Eric Schnap-

per, New York City, Edward Still, Birmingham, Ala., for plaintiffs-appellees.

Appeals from the United States District Court for the Northern District of Florida.

Before COLEMAN, PECK* and KRAVITCH, Circuit Judges.

KRAVITCH, Circuit Judge:

These consolidated cases arise from an attack on the forms of government in the City of Pensacola and Escambia County, Florida. The County Commission, City Council and School Board are all defendants. The district court, after extensive hearings, found that the at-large election systems used to elect each of the three defendant bodies are unconstitutional.[1] We affirm in part and reverse in part.

*Senior Circuit Judge of the Sixth Circuit, sitting by designation.

[1]These appeals proceeded in a piecemeal manner. After the district court held the three defendant bodies to be unconstitutional, but before a remedy was ordered, the defendants filed a notice of appeal. The district judge had expresed his belief that his order finding the systems unconstitutional was a final order, but certified it for interlocutory review in case he was in error.

While that appeal (No. 78-3507) was pending but before it was set for oral argument, the district court entered its remedy order against the city council. The plaintiffs filed a notice of appeal from the remedy order which was docketed as 79-1633 and was consolidated with 78-3507 for oral argument. That appeal is being decided today in a separate opinion. *Jenkins v. City of Pensacola,* 638 F.2d 1249 (5th Cir. 1981).

After the district court entered its remedy order for the city council, it entered remedy orders against the county commission and the school board. The school board chose not to appeal the order entered against it, but the county commission did appeal the remedy order. That appeal, 80-5011, was consolidated with 78-3507 and 79-1633 for oral argument and is being decided today in a separate opinion. *McMillan v. Escambia County,* 638 F.2d 1249 (5th Cir. 1981).

I. *Overview of Plaintiffs' Claim*

These class actions were filed simultaneously on March 18, 1977, by black voters of Pensacola and Escambia County. The plaintiffs alleged that the at-large systems for electing members of the area's three major governing bodies are unconstitutional as violative of their rights under the First, Thirteenth, Fourteenth and Fifteenth Amendments and are in violation of the Civil Rights Act of 1957, 42 U.S.C. § 1971(a)(1), the Voting Rights Act of 1965, as amended in 1975, 42 U.S.C. § 1973, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

The essence of the plaintiffs' complaints is that the at-large systems operate to preclude the black population, which comprises one-third of the city population[2] and one-fifth of the county population,[3] from electing a member of its own race to any of the three governing bodies.

The Board of County Commissioners is composed of five members who serve staggered four-year terms. Although they must run for numbered places corresponding to the districts in which they live, they are elected at-large by the voters of the entire county. Each major party is required to hold a primary in which only party members may vote. Candidates run at-large for numbered places in the primaries, and a majority vote is required for the party nomination. There is no majority vote requirement in the general election.

The School Board of Escambia County is composed of seven members who serve staggered four-year terms. Five of the members must reside in residential districts but two

[2]Blacks represent 23% of the registered voters in the City of Pensacola.

[3]Blacks represent 17% of the county's registered voters.

may reside anywhere in the county.[4] Otherwise, the election process for the School Board is the same as that for the County Commission.

The Pensacola City Council has ten members. Candidates must run for numbered places corresponding to the five wards, and must live in the corresponding ward. The election, however, is at-large. There are no primaries, but there is a majority vote requirement.

Since 1955, blacks have been candidates for the County Commission four times, for the School Board five times and for the City Council nineteen times. As of the date of trial, no black had ever been elected to either the County Commission or the School Board,[5] and only two blacks had been elected to the City Council. The two black City Council members had initially been appointed to the Council to fill vacant seats and were then successful in their bids for reelection.

The plaintiffs argue that because of racially polarized voting,[6] and because of the at-large system of elec-

[4]The two seats without a residency requirement were added in 1976. 1976 Fla. Laws, ch. 76-356. This change is discussed in note 14, *infra*.

[5]After the trial in this case, Dr. Vernon McDaniel, a black educator, was elected to the school board.

[6]Expert statistical evidence was presented which showed a very high correlation between the percentage of blacks in a precinct and the number of votes a black candidate receives in that precinct. The district court discussed the racial polarization of voting at length.

> There is in Escambia County a consistent racially polarized or bloc voting pattern which operates to defeat black candidates. There is in the county an active Klu Klux Klan which has run at least one candidate for office and obtained a significant number of votes. More importantly, however, there is an even larger bloc of white voters who, like almost all black voters, consistently vote for the candidate of their race whenever black candidates face white candidates.
>
> The complete record of county elections since 1955 was

tions, the votes of blacks in Pensacola and Escambia County are being diluted. In essence, their argument is

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brought before the court. The first black person to run for a county-wide office was John Reed, who was a candidate for the Escambia County Commission in May, 1966. He failed to make the runoff in the Democratic Primary. The R^2 coefficient of the correlation between Mr. Reed's vote returns and race was 0.98. The first black person to seek election to the Escambia County School Board was Otha Leverette in 1970. Rev. Leverette got the Democratic Party nomination without opposition; no other candidates qualified for this place. Some efforts were made to hide the fact he was black until the qualification date passed. But Leverette was beaten in the general election by a white Republican candidate, Richard Leeper. It was the first time in the modern history of Escambia County that a Republican had won any countywide office. Mr. Leeper received 22,523 votes even though there were at that time only 7,268 Republicans registered. There were 67,297 whites and only 13,037 blacks registered to vote. The R^2 coefficient for the correlation between Leverette's vote and race was 0.76, indicating a severely racially polarized vote. Richard Leeper had received only 10,712 votes in his race against a white Democratic candidate, Kirkland, in the 1966 school board general election.

This pattern of black candidates losing in racially polarized elections continues to the present. . . .

[Election] returns and regression statistics were analyzed by political scientists. The analyses focused upon voting returns from precincts which were 95% or more of one race. These returns, combined with regression statistics on all precincts, showed that whenever a black challenges a white for countywide office a significant majority of the whites who vote will consistently vote for the black's opponent. Sixty percent or more of the whites will do so in most cases. There were some differences in the testimony of plaintiffs' experts and defendants' expert. For example, the defendants' experts' approach to statistical analyses of polarization was somewhat different from that of plaintiffs' expert. Nonetheless, both found racial polarization in most, if not all, elections in which blacks ran.

Even though turnout among black voters is as high as that among white when black candidates run (it is regret-

that although blacks comprise a significant minority of the area, they will never be able to elect members of their race

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tably low for both races), and black voters vote almost unanimously for the black candidates, black candidates cannot attain a majority of the votes in the county because of the numerical inferiority of blacks combined with the white bloc vote. Several prominent white politicians acknowledged this fact.

The situation is much the same respecting the city. Although blacks constitute 33% of the city's population and 23% of its registered voters, with two noteworthy exceptions, black candidates have been denied office by the white bloc voting. All city election returns since 1955 were analyzed in the same manner as the countywide returns and again it was shown that most white voters showed a consistent preference for white candidates over black candidates resulting in consistent losses and frustration for the minority candidates. . . .

There have been only two exceptions to the white bloc vote in city elections. Two blacks, Dr. Spence and Hollice Williams, have been appointed by the council to fill vacant council seats and thereafter were both winners in their bids for reelection. The evidence strongly suggests that the absence of the white bloc vote against these two candidates is due to the fact that both were chosen and thereafter received public and private white political support. Indeed, one of the two had run for the council prior to his appointment, and was then soundly defeated by the usual white bloc vote. This effect of endorsement by community leaders is a common political phenomenon which is called "cuing." *See* V. O. Key, *The Responsible Electorate.*

Not all whites vote against blacks. In every race blacks have received some white support. But the city, like the county, is, by and large, a race conscious society. There is an established pattern of sufficient polarized voting to regularly defeat black candidates. White candidates do actively seek the votes of blacks. The studies of voter turnouts indicate, however, that when whites run against whites, black voter turnout drops, indicating a lack of interest by blacks in the candidates. Defendants' expert admitted that this may indicate that blacks view the choice of white candidates as irrelevant to their interests. Dist.Ct.Order, pp. 11-15.

to the governing bodies, and hence, their votes are worth less than those of their white counterparts. This claim has been presented to this court previously; *see, e.g., Cross v. Baxter,* 604 F.2d 875 (5th Cir. 1979); *Nevett v. Sides,* 571 F.2d 209 (5th Cir. 1978); *Blacks United for Lasting Leadership v. Shreveport,* 571 F.2d 248 (5th Cir. 1978); *NAACP v. Thomas County, Georgia,* 571 F.2d 257 (5th Cir. 1978); *Zimmer v. McKeithen,* 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd sub nom. East Carroll Parish School Board v. Marshall,* 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed. 296 (1976), and, more recently, to the Supreme Court in *City of Mobile v. Bolden,* 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980).

It should be noted that there is no allegation of any actual impediment to blacks voting, such as a poll tax or racially motivated gerrymandering of municipal boundaries. *Gomillion v. Lightfoot,* 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).[7] Rather, the issue here is limited to a claim of vote dilution.

II. *City of Mobile v. Bolden*

[1] *City of Mobile v. Bolden,* 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980), was pending before the Supreme Court when these cases were argued; accordingly, we postponed decision in these cases pending the *Bolden* decision. After *Bolden* was announced, we requested supplemental briefs from the parties. As Justice White predicted, however, we still are somewhat "adrift on uncharted seas with respect to how to proceed." 446 U.S. at 103, 100 S.Ct. at 1519.

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[7] In fact, the district court found that "[n]o impediments are thrown in the way of blacks to register and vote." Dist.Ct.Order, p. 10.

No view by the Supreme Court Justices commanded a clear majority. Mr. Justice Stewart, who authored the plurality opinion, joined by Justices Burger, Powell and Rehnquist, was of the view that a vote dilution claim, as opposed to an actual denial of the right to vote, is not a Fifteenth Amendment[8] claim at all, and that a Fourteenth Amendment claim had not been proven because the plaintiffs had not adduced adequate proof that the at-large election system constituted intentional discrimination against blacks, either in its inception or operation.

Although Justice Stevens considered a vote dilution claim to be a proper Fifteenth Amendment claim, he would require a plaintiff to prove that the system complained of is either "totally irrational or entirely motivated by a desire to curtail the political strength of the minority." 446 U.S. at 90, 100 S.Ct. at 1512.

In dissent, Justices Brennan, White and Marshall, for different reasons and in varying levels of vehemence, disagreed with the plurality that discriminatory purpose had not been shown in this case. Justice Marshall, joined by Justice Brennan, went further, arguing that an approach based on motivation is unworkable, and that proof

[8]Justice Stewart in *Bolden* gently chided this court and the district court for failing to address the complainant's statutory claim under § 2 of the Voting Rights Act of 1965. The plurality went on to hold, however, that the Section 2 of the Voting Rights Act does no more than elaborate on the Fifteenth Amendment. Under the plurality view, the *Bolden* plaintiffs had no valid Fifteenth Amendment claim and thus could not benefit from § 2 of the Voting Rights Act, either.

The plaintiffs here have urged this court to hold that there is an implied private cause of action under the Voting Rights Act and that they made out a case. Assuming there is a private cause of action and accepting the plurality opinion on the scope of § 2 (none of the other opinions addressed the issue), the plaintiffs cannot succeed under § 2 unless they can succeed under the Fifteenth Amendment. For a discussion of the viability of the Fifteenth Amendment in vote dilution cases, see note 9, *infra*.

of discriminatory impact alone should be sufficient. Justices White and Marshall both viewed the *Bolden* claim as a legitimate Fifteenth Amendment claim. Justice Brennan took no position on this.

Justice Blackmun assumed that if Justice Stewart is correct that discriminatory purpose must be shown, the evidence would support a finding of intent. He concurred in the result, however, because he disagreed with the remedy ordered by the district court.

Because no one analysis captured five Justices, we must determine the view with which a majority of the Court could agree. There were five clear votes (Stewart, Burger, Powell, Rehnquist and Stevens, JJ.) against the proposition that discriminatory impact alone is sufficient in vote dilution cases. Accordingly, to win a majority of the Court, in addition to impact, discriminatory purpose of some sort must be proven. Justice Stevens articulated the most conservative opinion on the extent to which such purpose must be shown. Because no other Justice concurred in his opinion, that discriminatory purpose must be the *only* purpose, we reject that analysis. Instead, we adopt Justice Stewart's opinion, though it commanded only four votes. If, in addition to impact, a discriminatory purpose exists in the enactment or operation of a given electoral system, all members of the Court save Justice Stevens agree that that system is unconstitutional.[9]

[9]Here, as in *Bolden*, the plaintiffs' complaint alleges violations of the Fourteenth and Fifteenth Amendments. Because Justices Brennan and Blackmun expressed no view as to the appropriate amendment under which to analyze a vote dilution claim, the majority view is unknown. Three Justices indicated this is a proper Fifteenth Amendment claim (Stevens, White and Marshall, JJ.); but the four Justice plurality opinion indicated it is not. We adopt the plurality view that vote dilution violates only the Fourteenth Amendment. Accordingly, the plaintiffs cannot succeed under either the Fifteenth Amendment or § 2 of the Voting Rights Act. *See* note 8, *supra*.

III. *Do the At-Large Electoral Systems Here Exist Because of Purposeful Discrimination?*

Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977), teaches us that an inquiry into legislative purpose is not an easy one. "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." 429 U.S. at 266, 97 S.Ct. at 564. The Court suggests several possible evidentiary sources for such a determination. Among them are: (1) the historical background of the action, particularly if a series of actions have been taken for invidious purposes; (2) the specific sequence of events leading up to the challenged action; (3) any procedural departures from the normal procedural sequence; (4) any substantive departures from normal procedure, i.e., whether factors normally considered important by the decisionmaker strongly favor a decision contrary to the one reached; and (5) the legislative history, especially where contemporary statements by members of the decisionmaking body exist. 429 U.S. at 267-68, 97 S.Ct. at 564.

The Stewart opinion in *Bolden* held that the so-called *Zimmer* factors regarding discriminatory impact (*see Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd sub nom. East Carroll Parish School Board v. Marshall*, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976)) were insufficient, standing alone, to support a finding of discriminatory purpose. Fortunately, the district court below correctly anticipated that the *Arlington Heights* requirement of purposeful discrimination must be met, and thus made explicit findings concerning intent in addition to and apart from its *Zimmer* findings. Accordingly, there is no need to remand the case for a

determination of whether purposeful discrimination exists. *See Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 272-73, 97 S.Ct. 555, 567, 50 L.Ed.2d 450 (White, J., dissenting).

A. *The County Commission*

[2] The at-large system for electing county commissioners is mandated by a 1901 amendment to the Florida Constitution. Fla. Const., art. 8 § 5. There is considerable evidence that at about that time the white citizens of Florida adopted various legislative plans either denying blacks the vote entirely or making their vote meaningless. For example, Jim Crow laws were instituted in the early 1900's, the Democratic Party established the white primary[10] in 1900, and there was widespread disfranchisement of blacks.[11]

Although many actions in the early 1900's had a clear invidious purpose, this court held in *McGill v. Gadsden County Commission*, 535 F.2d 277 (5th Cir. 1976), which also involved an at-large system mandated by the 1901 amendment to the Florida Constitution, that no racial motivation was behind the amendment. This, according to *McGill* and Dr. Shofner, the plaintiff's expert historian, is because there was such widespread disfranchisement of blacks by that time that they did not represent a political threat. Thus, relying upon *McGill* as reinforced by the

[10]Because the Democratic Primary was tantamount to the election, the exclusion of blacks from the primary effectively denied them the vote. Furthermore, the primary was conducted as a single-member district election. In essence, therefore, commissioners were elected in single-member districts though the general election was conducted at-large.

[11]*See generally* C. Vann Woodward, *The Strange Career of Jim Crow* (3rd ed. 1974).

conclusions of Dr. Shofner, the district court held that the at-large system for electing county commissioners was not adopted for discriminatory purposes. Based upon the evidence, this finding of the district court was not clearly erroneous and supported the court's conclusion.

Although the at-large system did not have its genesis in a purposeful attempt to exclude blacks from the political process, under the Stewart analysis in ***Bolden,*** invidious purpose in the operation of the plan will also invalidate it. 446 U.S. at 65, 100 S.Ct. at 1499. The district court held the at-large system for electing county commissioners is being perpetuated for invidious purposes. According to the district court, evidence of such an intent can be found in the fact that the County Commission has twice rejected the recommendations of its own charter government committees that the county change to single-member districts.

Four county commissioners testified at trial that race did not motivate their refusal to submit the issue of single-member districts to the electorate. Each stated that it was his personal belief that all voters of the county should be allowed to vote on each of the commissioners so the board would be more responsive to the needs of the community as a whole. Thus, the commissioners asserted "good government" reasons for perpetuation of the at-large system.

The district court held, however, that the purpose of perpetuating the present system was not legitimate.

> In their post-trial memorandum, defendants admit that the rejection of the single-member district aspect of the charter proposal "reflects the commissioners' desire to maintain their incumbency." This was also the court's impression at trial. Each of these commissioners had been

> elected in countywide elections. They could not know how they would fare in single district elections. Yet it is apparent that in such elections one or more of them might be replaced by blacks.
>
> To this court the reasonable inference to be drawn from their actions in retaining at-large districts is that they were motivated, at least in part, by the possibility single district elections might result in one or more of them being displaced in subsequent elections by blacks.
>
> * * * * * *
>
> That [the commissioners'] motivations may be selfish rather than malicious toward blacks does not alter the conclusion that their intent was to continue the present dilution of black voting strength. The present at-large election system for county commissioners is being maintained for discriminatory purposes.[12]

If the district court is correct in its conclusion that the at-large election system is being maintained for discriminatory purposes, then we must affirm its ultimate decision that the system is unconstitutional.

We have reviewed the testimony, however, and found no evidence of racial motivation by the county commissioners in retaining the at-large system. The trial court stressed defendant's statement in a post-trial memorandum that rejection of the charter proposal reflected the commissioners' desire to retain their incumbency. Retention of incumbency was never mentioned in the testimony. Moreover, in our view the desire to retain one's incumben-

[12]Dist.Ct.Order, pp. 30-31.

cy unaccompanied by other evidence ought not to be equated with an intent to discriminate against blacks *qua* blacks. The commissioners all testified that racial considerations played no role in their rejection of the charter proposal; the plaintiffs introduced no evidence to the contrary. The trial judge, of course, was entitled not to believe the commissioners' testimony; in the absence of contradictory evidence, however, disbelief of that testimony is not sufficient to support a contrary finding. *See Moore v. Chesapeake and Ohio Railway*, 340 U.S. 573, 576, 71 S.Ct. 428, 429, 95 L.Ed. 547 (1951). Therefore, the evidence falls short "of showing that the appellants 'conceived or operated [a] purposeful [device] to further racial discrimination.' " 446 U.S. at 66, 100 S.Ct. at 1499, *quoting Whitcomb v. Chavis*, 403 U.S. 124, 149, 91 S.Ct. 124, 149, 91 S.Ct. 1858, 1872, 29 L.Ed.2d 363 (1971).

B. *The School Board*

[3] An at-large system for electing School Board members was established by state law in 1947. Fla. Stat. §§ 230.08, .10 (1975). The district court discussed the enactment of that law, and, applying the *Arlington Heights* criteria, found it to have been born from a desire to exclude blacks.

From 1907, 1907 Fla.Laws, ch. 5697, § 1, until 1945 there was clear support for single-member district elections for School Board members. During this period the primary elections for School Board members were conducted as single-member district elections, while the general elections were at-large. Because the all-white Democratic primary was tantamount to the election, from 1907 through 1945 the School Board was a de facto, if not de jure, single member district body. Thus, in 1945 the clear policy of the citizenry of Escambia County was to

favor single-member district elections for School Board members.

The 1945 decision in *Davis v. State ex rel. Cromwell,* 156 Fla. 181, 23 So.2d 85 (1945) (en banc), changed that, however, by declaring unconstitutional the white primary. In the very first legislative session following *Davis,* the legislature enacted statutes requiring at-large elections in both the primary, 1947 Fla.Laws, ch. 23726, § 7, and the general election, 1947 Fla. Laws, ch. 23726, § 9.

Looking at the change from single-member districts to at-large districts through *Arlington Heights* glasses, the conclusion that the change had an invidious purpose is inescapable. The specific sequence of events leading up to the decision mandates the conclusion that the citizens of Escambia County in 1945, with the demise of the white primary, were not going to take any chances on blacks gaining power and thus purposefully sought to dilute black voting strength through the use of an at-large system. Furthermore, the history of the county suggests a substantive policy which favored single-member districts for the election of School Board members. The abrupt, unexplained departure from that forty-year policy upon the heels of the white primary's demise justifies the district court's conclusion that the change was racially motivated. Accordingly, we concur in the statement of the district court that "[t]he evidence of discriminatory motives behind the at-large requirements of the 1947 system is compelling."

There is recent evidence of community awareness that the effect of the at-large system is to dilute the voting strength of blacks, and evidence that the dilutive effect will be capitalized on by the white majority to keep the School Board responsive to them. In 1975 the School Board took a position favorable to black interests on the

question of whether the nickname "Rebel" should continue to be used at Escambia County High School.[13]

The district court found, that, in at least partial retaliation against the Board for its decision on the issue, the legislative delegation introduced a bill to increase the size of the Board to seven members, to change from an elective to an appointive school superintendent, and to reduce the salaries of Board members. The bill as introduced had the unanimous support of the local delegation.[14] As is required by state law, a referendum election was held to present the bill to the Escambia County electorate for ap-

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[13]In 1973, black students intervened in the federal school desegregation suit to challenge the continued use of the nickname "Rebel" at Escambia County High School. White students and parents also intervened, but in defense of the nickname. This provoked considerable racial unrest in the school.

The district court enjoined further use of the "Rebel" name, *Augustus v. School Board of Escambia County*, 361 F.Supp. 383 (N.D.Fla. 1973), but the decree was modified on appeal. 507 F.2d 152 (5th Cir. 1975). The Fifth Circuit directed the district court to give the Board the opportunity to resolve the "Rebel" issue on its own. The Board's solution was to permit reinstatement of the nickname if there was a two-thirds majority vote in favor of doing so by the students at the high school. The matter was voted on and though a majority of the students voted in favor of reinstatement, it was not a two-thirds majority.

There was an angry reaction to the result and at least one attempt was made to influence a School Board member to vote to reinstate the nickname notwithstanding its failure to garner the support of two-thirds of the student body. The School Board did not capitulate, and its tenacity led to the "Board packing" episode, *infra*.

[14]Changes in local governments are submitted to the Florida Legislature through the local delegation, generally based on a resolution by the local government. As a practical matter, local legislation will pass the legislature if it has the unanimous support of the local delegation. The proposed change is then submitted to the electorate in the form of a referendum. Discriminatory intent at any stage will infect legislation.

proval. The proposals to increase the size of the Board and to reduce members' salaries passed overwhelmingly, but the provision to change to an appointed superintendent was defeated.[15]

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[15]Generally, the change from a five-member to a seven-member school board is accompanied by a change from an elected to an appointed superintendent. By separately submitting the two proposals, Escambia County is now the only county in Florida to have a seven-member board and an elected superintendent.

The School Board challenged the change to a seven-member board in court. The Florida Supreme Court held against the board, stating that "[t]he political motivations of the legislature, if any . . . are not a proper matter of inquiry for this Court." *School Bd. of Escambia Co. v. Florida*, 353 So.2d 834, 839 (Fla. 1977) (Hatchett, J., dissented).

As a general rule, a court does not inquire into the political motivations of legislators. The Supreme Court stated in *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252 at 265-66, 97 S.Ct. 555 at 563:

> [I]t is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.

(footnote omitted). It appears that the School Board did not argue in state court that the plan to increase its number had an invidious purpose, and thus, the Florida Supreme Court cannot be faulted for deferring to the legislature. In this court, however, the plaintiffs have made it painfully obvious that invidious purposes still motivate some of Florida's legislators' decisions. Such motivations were made not simply undesirable but unconstitutional over one hundred years ago. People have become more subtle and more careful in hiding their motivations when they are racially based. This makes the district court's inquiry in the first instance and ours on review more difficult. However, it is obviously equally important to invalidate actions motivated by subtle, hidden invidious purposes as it is to do away with more blatant forms of discrimination.

It is impossible to know unequivocally what motivated the electorate to vote to increase the size of the School Board. However, the fact that an earlier referendum for such an increase failed by a two-to-one margin, in conjunction with the racially charged atmosphere at the time of the second referendum, strongly suggests the vote was racially motivated. The district court described the situation as follows:

> The 1976 change in the school board's election system was avowedly to pack the board to make it more responsive to the white majority on a particular racially polarized issue . . . . This is a telling indication of the legislators' and community's recognition and use of the at-large system as a method of rendering black voters politically impotent to the desires of the white majority.

Dist.Court Order, p. 31.

The district court correctly held that the at-large system of electing School Board members was developed with a discriminatory purpose and is being utilized by the majority population for such a purpose. Accordingly, the district court was correct in holding the at-large system for electing School Board members unconstitutional.[16]

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[16]The district court, in determining that the School Board election plan was being maintained for discriminatory purposes, stated that it considered *Zimmer* factors in conjuction with other evidence. *Zimmer v. McKeithen* has been invalidated by *Bolden* and any conclusion based solely on *Zimmer* factors would be erroneous. Here, however, the court's conclusion that the plan had been maintained for discriminatory purposes was based on other evidence, *i.e.*, the 1976 referendum, in conjunction with the *Zimmer* factors. Moreover, as regarding the School Board, a finding of discriminatory motive in maintaining the system is not necessary to invalidate it; the court's finding of discriminatory intent in the creation and discriminatory impact suffice to satisfy the *Bolden* standard.

C. *City Council*

In 1931 a council-manager form of government was instituted in Pensacola. As originally enacted, it provided for ten council members: five were elected from single-member wards and five were elected at-large but with a ward residency requirement.

In 1955, a black ran a very close race against a white for one of the single-member district seats. There was testimony that when the council next reapportioned the wards, it purposefully gerrymandered that ward to increase its percentage of whites. Furthermore, three years later, the council asked the local legislative delegation to change the law so that all the council members would run at-large. A man who served on the city council at that time testified at trial, and the following colloquy occurred:

> THE COURT: And the reason for that change [to 10 at-large seats] was what?
>
> A. Was because then we wouldn't have this hassle of reapportioning to keep so many blacks in this ward and so many whites in that ward and keep the population in balance as to race.

(R. XVI-605).

Other evidence of an invidious purpose in changing those five single-member district seats to at-large seats came in testimony by then-Governor Reubin Askew. In 1959, Askew was a first-term state representative from Escambia County. He testified that he did not have a discriminatory motive in supporting the change to all at-large seats, testimony which was credited by the district court. He further testified that though he was unaware of the council members' motives generally, he was aware that one council member had indicated the change was wanted to avoid a "salt and pepper council."

On the eve of the referendum election at which the change to all at-large seats was at issue, an editorial in the *Pensacola Journal* stated that there would be advantages to having all council members elected at-large. "One reason is that small groups which might dominate one ward could not choose a councilman. Thus, one ward might conceivably elect a Negro councilman though the city as a whole would not. This probably is the prime reason behind the proposed change."

It is not easy for a court in 1981 to decide what motivated people in 1959. The series of events leading up to the current system of electing the city council of Pensacola, however, certainly suggest racial motivation. Furthermore, though not legislative history, editorials written contemporaneously with the action are probative evidence of the motivation of the action.

The district court found that "[t]he conclusion of plaintiffs' expert historian that race was a concurrent motivating factor in the 1959 change is inescapable (footnote omitted)." We agree.

IV. *Conclusion*

Having found that the at-large systems for electing school board members and city council members were born out of a desire to keep blacks from being elected, our inquiry is virtually complete.

[4] The Supreme Court in *Bolden* found proof of purpose to be the major stumbling block, apparently agreeing that if the Mobile system had been established intentionally to keep blacks from being elected, then a constitutional case[17] would have been made. In other words, while

[17] *See* note 9, *supra*, for a discussion of which constitutional provision has been violated.

there is nothing *per se* unconstitutional about the at-large system of electing local governmental bodies, *e.g.*, *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973); *Whitcomb v. Chavis*, 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971), if the purpose of adopting or operating that particular system is invidiously to minimize or cancel out the voting potential of racial minorities, and it has that effect, then it is unconstitutional.

In this case we agree with the district court that the at-large systems for city council and school board were purposely adopted to minimize the voting strength of the black community. Because it is undeniable that the systems have in fact had that effect,[18] we conclude that they are unconstitutional.

The defendants argue that such a conclusion is not warranted because: (1) white candidates actively seek black support; (2) the district court found them to be responsive to the needs of the black community; and (3) as to the city, there is no evidence that the system is being maintained for invidious reasons.

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[18]The defendants argued at length in their briefs and at oral argument that there is no discriminatory effect in this case because whites campaign for black votes and were found to be generally responsive to the needs of the black community. The defendants' argument misses the point. That the governing body may be benevolent is not relevant. The effect necessary for a case to be made is dilution of the votes of the minority. This is generally proven by evidence that a substantial minority is consistently unable to elect candidates of its choice.

In this case it is very clear that the at-large systems are having the effect they were designed to have – blacks are consistently defeated in their bids for elective office. This is not to be interpreted to mean, of course, that every time a black is defeated in a head-to-head race against a white that the election is tainted. We hope eventually we will reach the point where local governing bodies can be elected on an at-large basis, and people will vote for candidates based on their individual merit and not on the color of their skin. Unfortunately, we have not yet reached that stage.

The first two arguments grow out of the district court's analysis of the now-discredited *Zimmer* criteria. After *Bolden* it would seem that neither of those two factors, whether whites campaign for black support or whether the people in elective positions are responsive to minority needs, is relevant to the constitutional inquiry. Rather, the inquiry is more circumscribed – was the system purposefully designed or perpetuated to minimize the voting strength of a recognizable, distinct class which has been singled out for different treatment under the laws, *Castaneda v. Partita,* 430 U.S. 482, 494, 97 S.Ct. 1272, 1280, 51 L.Ed.2d 498 (1977), and does it have that effect? Whether current office holders are responsive to black needs and campaign for black support is simply irrelevant to that inquiry; a slave with a benevolent master is nonetheless a slave.

We can similarly dispose of the city council's argument that because there is a finding that its at-large system is not being perpetuated to minimize black voting strength, it is immune from constitutional attack. Essentially, it argues that the passage of time can transform an unconstitutional system into a constitutional one. We disagree. If the system was unconstitutional in its inception and if it continues to have the effect it was designed to have, then the pure hearts of current council members are immaterial.[19]

The judgment of the district court is AFFIRMED in part and REVERSED in part.

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[19]That is not to say pure hearts on the part of council members are not desirable or laudable but only that this is not relevant to the issue here presented. Our purpose is to correct a system which was set up to, and does, minimize the voting strength of a sizeable minority of the population. We are not here to punish or praise the current policies or motivations of these council members – good people can be elected by a bad system. It is the system that is unconstitutional and that must be corrected.

2. Decision of the Fifth Circuit in *McMillan v. Escambia County, Florida*, 638 F.2d 1249 (5th Cir. 1981).

Henry T. McMILLAN et al.,
Plaintiffs-Appellees,

v.

ESCAMBIA COUNTY, FLORIDA, et al.,
Defendants-Appellants.

No. 80-5011.

United States Court of Appeals,
Fifth Circuit.

Feb. 19, 1981.

Appeals from the United States District Court for the Northern District of Florida; Winston E. Arnow, Chief Judge.

Richard I. Lott, County Atty., Ray, Patterson & Kievit, P.A., Pensacola, Fla., Rhyne & Rhyne, William S. Rhyne and Charles S. Rhyne, Washington, D.C.; for defendants-appellants.

Blacksher, Menefee & Stein, P.A., J. U. Blacksher, Mobile, Ala., Kent Spriggs, Tallahassee, Fla., Jack Greenberg, New York City, Edward Still, Birmingham, Ala., for plaintiffs-appellees.

Before COLEMAN, PECK* and KRAVITCH, Circuit Judges.

*Senior Circuit Judge of the Sixth Circuit, sitting by designation.

KRAVITCH, Circuit Judge:

This is an appeal from the remedy ordered by the district court to correct the found unconstitutionality of the system for electing county commissioners. Because we held today in No. 78-3507, 638 F.2d 1239, that the at-large system for electing county commissioners is not unconstitutional, the order appealed from is hereby VACATED.

3. Memorandum Decision and Order of the United States for the Northern District of Florida in *McMillan v. Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla. Dec. 3, 1979).

a. Memorandum Decision.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HENRY T. McMILLAN, et al.,
Plaintiffs,
vs. PCA No: 77-0432

ESCAMBIA COUNTY, FLORIDA, et al.,
Defendants.
_____/

MEMORANDUM DECISION

On September 24, 1979, this court in memorandum decision held that Escambia County did not have the legislative authority to reapportion itself so that, if the voters rejected the proposed county charter, the court would be forced to adopt a judicially devised plan for redistricting that utilized five single-member districts. On November 6, 1979, the voters of Escambia County rejected the proposed charter and, accordingly, the court held a hearing on November 26 to consider and determine the exact plan to be approved and placed into effect as judicially adopted by the court. In a letter to all counsel of record, the court invited both sides to submit proposed plans as to the appropriate district boundaries with the

suggestion that there was some merit in having the districts conform to those adopted for the election of members to the Escambia County School Board.

At the hearing, the county declined to take a position as to appropriate district lines. Plaintiffs found the school board plan acceptable. Accordingly, it is the decision of this court that, for purposes of electing members of the Escambia County Board of County Commissioners, Escambia County shall be reapportioned into five single-member districts, the boundaries of which shall conform to those adopted by the court in its order of February 27, 1979, respecting election of members to the Escambia County Board of Education.

The county did request that the single-member plan be "phased-in" by permitting Commissioners John Frenkel and Kenneth Kelson to serve out the balance of their terms as commissioners, which expire in 1982. Under the county's plan, Commissioners Frenkel and Kelson would complete the four year terms to which they had been elected in the previous at-large election, with Districts 2 and 4 each electing no commissioner until 1982. Under the county's suggestion, Districts 1, 3 and 5 would elect representatives to four year terms in 1980. District 3 is the only district that has a black majority; that district would be afforded opportunity to elect a commissioner at the earliest possible opportunity, under the county's proposal.

Plaintiffs oppose the county plan. Instead, plaintiffs seek to have the entire commission elected in 1980 with the representatives of Districts 1, 2 and 3 to serve four year terms and the representatives of Districts 4 and 5 to serve two year terms. In 1982, representatives of Districts 4 and 5 would be elected to four year terms and thus the system of staggered elections would be preserved.

Having reviewed the arguments presented at hearing, the post-hearing briefs submitted by the parties, and its own research into the question, the court finds that the plaintiffs' plan providing for the election of all members of the County Commission in 1980 should be adopted.

The county contends that "phasing-in" the single-member plan will minimize any disruption that might result from a complete turnover of commissioners in 1980 by enabling the two incumbents to lend their experience and facilitate the transition from at-large to single-member districts. The county also asserts the two commissioners were duly elected to four year terms running through 1982 and thereby have some degree of entitlement to finish them. Moreover, permitting them to serve out their full terms will avoid the expense of two elections in 1980 and will avoid forcing two commissioners elected in 1980 to serve truncated terms of only two years.

The court has considered these arguments but finds there are compelling arguments to the contrary. Most importantly, where a governing authority is found to be holding office by virtue of an election scheme which is constitutionally infirm, a court, under its equitable authority, should take steps to correct such defects at the earliest possible date. *Wallace v. House,* 377 F.Supp. 1162 (W.D. La. 1974), *aff'd,* 538 F.2d 1138 (5th Cir. 1976) and cases cited therein. Moreover, while "phasing-in" the single-member plan, as suggested by the county, would give, as would plaintiffs' proposal, reasonable opportunity to the plaintiff class to elect a commissioner at the earliest possible opportunity, the county's suggestion would also create a situation in which some citizens of the county had greater representation than others. From 1980 to 1982 three districts would have their own representatives while

the other two would have representatives who were elected by the entire county. Election of commissioners from all districts in 1980 provides the speediest means to insure equal representation for all citizens of Escambia County.

Furthermore, there are countervailing considerations to other arguments advanced by the county. All candidates for commissioner in the 1978 election ran with the knowledge that, due to prior rulings in this suit, new elections were likely to be held in 1980. Moreover, "[n]o office holder has a vested right in an unconstitutional office any more than he has a right to be elected to that office." *Wallace v. House,* supra at 1201, quoting *Reynolds v. State Election Board,* 233 F.Supp. 323 (W.D. Okl. 1964) (three judge court). Finally, as plaintiffs point out, evidence adduced at earlier stages of the case indicates that incumbents in Escambia County are reelected with some degree of regularity. Thus, there is at least some possibility that, if all members on the commission are elected in 1980, there still will be some continuity in membership from the prior commission.

Therefore, the court finds that election of all five members of the Escambia County Board of County Commissioners in 1980 under a single-member plan is appropriate.

In reaching this conclusion, the court has not overlooked the fact that, as the county points out, its request is not without precedent. Suffice it to say that, in the factual situation here presented, the court concludes its finding here is the one it should make.

There remains the question of the best method to stagger the terms of the commissioners. Under the plan adopted for election of members to the school board,

Districts 1, 2 and 3 are to elect representatives in 1980 to serve two year terms, while Districts 4 and 5 elect members to four year terms. The rationale for such is that it provides for the election every two years of three school district officials, with three of them being school board members, and the other three being two school board members and the superintendent of schools. As the superintendent's elected term expires in 1980, there was provided for the election of only two members to serve four year terms commencing in 1980. As plaintiffs point out, adoption of a "mirror-image" plan for election of county commissioners will ensure that each district in the county will have one major county board office to vote for in each major election year. Moreover, adoption of a plan that calls for election in 1980 of three commissioners to four year terms will present a savings in expense to the county and the candidates. It will also mean three, instead of two, are elected in 1980 to the normal four year term. Therefore, the court finds that a proper plan calls for election of all commissioners in 1980 with representatives of Districts 1, 2 and 3 to serve terms of four years and representatives of Districts 4 and 5 to serve initial terms of two years. In subsequent elections, the terms of all elected will be for four years.

Order of this court will be entered in accordance with the foregoing.

DATED this 3 day of December, 1979.

/s/ Winston E. Arnow

WINSTON E. ARNOW, Chief Judge

b. Order.

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HENRY T. McMILLAN, et al.,
Plaintiffs,

vs. PCA No. 77-0432

ESCAMBIA COUNTY, FLORIDA,
et al.,
Defendants.

ORDER

Pursuant to and in accordance with Memorandum Decision of this date, it is

ORDERED AND ADJUDGED as follows:

1. For the purposes of electing members of the Escambia County Board of County Commissioners, Escambia County shall be reapportioned into five single-member districts, the boundaries of which shall conform to those adopted by this court in its Order of February 27, 1979, respecting election of members to the Escambia County Board of Education, a description of which shall be attached as an appendix to this order. A map of such plan shall be available for inspection in the office of the clerk of this court.

2. At the next regularly scheduled primary and general elections in 1980, commissioners representing all five single-member districts shall then be elected; provided, however, the court retains the power to alter the date of the aforesaid elections, upon the appropriate motion of

one or more of the parties or upon its own motion, depending in particular upon the course of future events in connection with appeals of this court's judgment or in related cases.

3. To preserve the staggered terms now provided by law for members of the Escambia County Board of County Commissioners, following their election in 1980, those commissioners elected from Districts 1, 2 and 3 shall serve terms of four years, while those elected from Districts 4 and 5 shall serve terms of two years, initially. Thereafter, all board members shall be elected for terms of four years.

4. Following the publication of each federal decennial census, the districts from which members of the Escambia County Board of County Commissioners are elected shall be reapportioned to fairly comply with one-person, one-vote requirements and the decrees of this court.

It is further ORDERED AND ADJUDGED that the defendants, Escambia County, the Board of County Commissioners of Escambia County, Gerald Woolard, Kenneth Kelson, Zearl Lancaster, John E. Frenkel, Jr., and Marvin Beck, individually and in their official capacities as members of the Escambia County Board of County Commissioners; Joe Oldmixon, individually and in his official capacity as Supervisor of Elections for Escambia County, their successors, officers, agents, servants, employees, and attorneys, and those persons in active concert of participation with them who receive actual notice of this order by personal service or otherwise, are hereby enjoined from failing to:

(1) Redistrict and reapportion as set out above;

(2) Make and hold the elections as redistricted and ordered above.

Pursuant to Section 3 of the Voting Rights Act of 1965, as amended in 1975, 42 U.S.C. § 1973a, the court retains jurisdiction of this action for a period of five years unless such period is shortened or extended by further order of this court. During the period of retained jurisdiction, no voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect at the time this action was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color; provided that such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of Florida or of Escambia County to the Attorney General of the United States and the Attorney General has not interposed an objection within sixty (60) days after such submission, except that neither this court's findings nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice or procedure.

DONE AND ORDERED this 3 day of December, 1979.

/s/ Winston E. Arnow

WINSTON E. ARNOW, Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HENRY T. McMILLAN, et al., Plaintiffs,	)	
vs.	)	CIVIL ACTION No: 77-0432
ESCAMBIA COUNTY, FLORIDA, et al., Defendants.	)	

ELECTON PLAN OF DEFENDANT SCHOOL BOARD

In response to the Court's final judgment-dated July 10, 1978, Defendant School Board has adopted an election plan to be implemented in the event that the Court's judgment against Defendant School Board is ultimately affirmed. The plan is described as follows:

There shall be five School Board districts of contiguous territory as nearly equal in population as practicable. One School Board member shall reside in each district. The districts are defined by the numbers of the voting precincts as they existed on August 23, 1978, contained within each district as follows:

District 1	*District 2*	*District 3*	*District 4*	*District 5*
Population	Population	Population	Population	Population
41,238	40,845	40,525	41,530	39,785
Precincts:	Precincts:	Precincts:	Precincts:	Precincts:
1	2	12	4	6
5	3	13	17	7
26	24	14	35	8
28	25	15	39	10
41	32	27	40	11
43	34	31	42	16
54	44	48	46	18
55	47	49	50	19
61	57	56	51	20
70	58	62	63	21
83	59	76	64	22
87	65	90	66	23
97	71		72	33
99	77		93	36
100	78		94	37
102	79		96	45
105	80		98	53
113	81		106	69
	82		107	101
	84		108	111
	103		109	112
	104		110	
			114	

The population of each district estimated from 1970 U.S. Census date is set forth in the table.

District 3 was deliberately designed to effectuate a 55 per cent black population majority and a 60 per cent black electoral majority within the district. All other districts were designed without regard to race.

The electors residing in each of the five districts will elect a single School Board member who will reside within the district. In addition, the electors residing in the county

will elect two other School Board members to serve in numbered places without regard to the candidates' places of residence within or without a particular district.

In the first election to apply this plan, School Board members residing in Districts 1 and 2 and one of the School Board members elected at large will be elected to serve two-year terms; School Board members residing in Districts 3, 4 and 5, and the other School Board member elected at large will be elected to serve four-year terms. Thereafter, all School Board members shall be elected to serve staggered terms of four years.

Respectfully submitted,

LOUIS F. RAY, JR., P.A.
By /s/ Louis F. Ray, Jr.
Louis F. Ray, Jr.
A member of the firm
Attorneys for Defendant
School Board, et al.
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and

RHYNE & RHYNE
By: Charles S. Rhyne
A member of the firm
Of Counsel to
Attorneys for Defendant
School Board, et al.
1000 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036

CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing has been furnished to: J.U. Blacksher, Esquire and Larry T. Menefee, Esquire of Crawford, Blacksher, Figures & Brown, 1407 Davis Avenue, Mobile, Alabama 36603, Kent Spriggs, Esquire, 324 West College Avenue, Tallahassee, Florida 32301, Jack Greenberg, Esquire and Eric Schnapper, Esquire, Suite 2030, 10 Columbus Circle, New York, New York 10019, W. Edward Still, Esquire, 601 Title Building, Birmingham, Alabama 35203, Attorneys for Plaintiffs, and Don J. Caton, Esquire, Second Floor, City Hall, Pensacola, Florida, Attorney for Defendant City of Pensacola, and Richard I. Lott, Esquire, 28 West Government Street, Pensacola, Florida 32501, Attorney for Defendant Escambia County, by U.S. mail this 24th day of August, 1978.

/s/ Louis F. Ray, Jr.

LOUIS F. RAY, JR.

4. Memorandum Decision of the United States District Court for the Northern District of Florida in *McMillan v. Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla. Sept. 24, 1979).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HENRY T. McMILLAN, et al.,
Plaintiffs,

vs. PCA No: 77-0432

ESCAMBIA COUNTY, FLORIDA, et al.,
Defendants.
_____/

MEMORANDUM DECISION

This matter is before the court on the question of approval of a plan for electing county commissioners.

Heretofore the county commissioners in this county have proposed to this court a plan, by an ordinance adopted on September 21, 1978, providing for a seven member board of county commissioners, with five members to be elected from single member districts and two members to be elected by the voters of the county at large.

Because Escambia County was considering a change to a charter form of county government, plaintiffs requested the court to withhold action on that plan until a future date when the proposed form of charter government would be known. The defendants did not oppose such request and so the court has withheld action.

Now before the court is the fact that a charter commission appointed by the local legislative delegation of the Florida Legislature has proposed a county charter for the governing of Escambia County. A referendum election on that charter question has now been set for November 6, 1979, at which time the voters may approve or disapprove of the charter.

Parties before the court agree that the time is now ripe for this court to take action, both on the plan heretofore proposed by the county commissioners, and the one provided for in the proposed county charter.

The plan provided for in the proposed county charter calls also for a seven member board of county commissioners with five members to be elected from single member districts and two members to be elected by the voters of the county at large. Thus, the two plans before the court are strikingly similar. There is a difference in that, while the plan submitted to the court by the defendant county commissioners fixes the boundaries of contiguous and compact districts conforming as nearly as possible with the one man one vote requirement, such task under the charter government proposal would be undertaken by a reapportionment commission.

In *Wise v. Lipscomb,* 437 U.S. 535 (1978), the court held that a plan of reapportionment submitted by the City of Dallas should be considered not as judicially imposed, but as legislatively enacted, and accorded deference as such. Five of the justices said that legislative authority was required before the plan could be considered as legislative in nature; four said the plan should be so considered even though the commission had no legislative authority. Of the five justices, two found that the record before the court suggested no statutory, state constitutional, or

judicial prohibition on the authority of the city council to enact a municipal election plan under circumstances such as those presented there and that the court was in no position to overturn the district court's acceptance of the city ordinance as a valid legislative response to the court's declaration of unconstitutionality. The other three justices said that the legislative authority did not exist.

As this court understands the decision, a majority of the court, therefore, holds that in a situation like the one presented here there must exist legislative power before any plan adopted by the board of county commissioners of this county may be considered by this court as legislatively adopted.

The Constitution of Florida prohibits any form of election for county commissioners other than the at large system. It was that system that has been found unconstitutional by this court, insofar as these defendants are concerned.

However, the Florida Constitution also provides that the Escambia County Commission has "only such power of self government as is provided by general or special law." Thus the county commission of Escambia County does not now possess the legislative authority to reapportion itself so that the plan adopted by it may not, under *Wise*, be given legislative deference. Instead, any plan submitted by it must be treated instead as one judicially devised and imposed.

Under the authorities before the court, a judicially devised plan must require total use of single member districts unless persuasive justification to the contrary exists. No such persuasive justification is here established. Because of that, the plan heretofore submitted by the county commission of Escambia County must be disapproved by this court.

However, respecting the proposed charter commission plan, even though it is substantially the same election plan, the test to be applied by this court is a different one. Under Florida's Constitution, counties operating under charters have all powers of local self government not inconsistent with general law or with a special law approved by the vote of the electors. Thus, if the voters of Escambia County had, by referendum, approved the proposed charter so that it then becomes effective, the seven member plan incorporated in it should be treated by this court as a legislatively adopted plan.

In motion before this court, plaintiffs have stated that:

> 3. In consideration of the opportunity for a speedier reapportionment providing single-member districts, and for the limited purpose of this motion for court action prior to the November 6 charter referendum, plaintiffs waive any objection they may have to the five-two reapportionment scheme proposed by the Charter Commission, subject to the condition that district boundaries subsequently drawn if the charter is approved remain subject to review by this court for compliance with the remedial purposes of its prior judgments herein.

In *Wise*, the legislative remedy plan which was approved contained two black districts out of eleven. Dallas was at that time approximately 25% black. Thus, the districts in which the blacks were reasonably assured of being able to obtain black representation constituted approximately 18% of the total districts and so, to that extent, was not proportional to the black population percentage.

In the instant case blacks constitute approximately 20% of the population of Escambia County. The evidence before the court does establish that the county may be

drawn into five single member districts, complying with the one man one vote requirement, and with one of those districts having sufficient number of blacks so as to reasonably assure the ability to elect a black candidate in one district.

Thus, there is presented before this court a situation in which blacks may be reasonably assured of only one of the seven seats on the county commission, or 14.3% of the total number of seats. As in the *Wise* case, they are not reasonably assured of seats in proportion to their population.

However, in view of the plaintiffs' position taken before this court, and at least similarities in percentages between the situation here presented and the situation existing in *Wise,* the court concludes it should give its tentative approval, as suggested by the parties, to the reapportionment plan contained in the proposed Escambia County charter to be submitted to the referendum election on November 6, 1979.

Such approval is subject to the condition that the single member district boundaries that may subsequently be drawn by the reapportionment commission, if the proposed Escambia County charter is approved, shall be submitted to the court for its review and approval as an adequate remedy for the present racially discriminatory election system.

DATED this 24th day of September, 1979.

/s/ Winston E. Arnow

WINSTON E. ARNOW, Chief Judge

5. Memorandum Decision and Judgment of the United States District Court for the Northern District of Florida in *McMillan v. Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla. July 10, 1978).

a. Memorandum Decision.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HENRY T. McMILLAN, et al.,
Plaintiffs,

vs. PCA No. 77-0432

ESCAMBIA COUNTY, FLORIDA, et al.,
Defendants.

ELMER JENKINS, et al.,
Plaintiffs,

v. PCA No. 77-0433

CITY OF PENSACOLA, et al.,
Defendants.

MEMORANDUM DECISION

These consolidated actions were filed on March 18, 1977 by black citizens of Pensacola and Escambia County, Florida alleging that the at-large systems of electing members of the Board of County Commissioners of Escambia County, the School Board of Escambia County, and the City of Pensacola Council deny black citizens equal access to the political process leading to nomination and election to such governmental bodies. Plaintiffs contend that, accordingly, the at-large election systems are

fundamentally unfair, with respect to black citizens, and violate their rights protected by the first, thirteenth and fifteenth amendments to the Constitution of the United States; both the Due Process and Equal Protection clauses of the fourteenth amendment; the Civil Rights Act of 1870, 42 U.S.C. § 1971(a)(1); and the Voting Rights Act of 1965, 42 U.S.C. § 1973.

Defendants in Civil Action No. 77-0432 are Escambia County, Florida; the incumbent members of the Board of County Commissioners of Escambia County, who are sued individually and in their official capacities; the School District of Escambia County; the School Board of Escambia County; the members of the School Board of Escambia County, who are sued individually and in their official capacities; and the incumbent Supervisor of Elections for Escambia County, who is sued individually and in his official capacity. The defendants in Civil Action No. 77-0433 are the City of Pensacola, Florida; the incumbent members of the Pensacola City Council, who are sued individually and in their official capacities; the Clerk for the City of Pensacola, who is sued individually and in his official capacity; and the Supervisor of Elections for Escambia County, who is sued individually and in his official capacity.

By way of relief plaintiffs seek a declaratory judgment and injunction against the present at-large election systems and an order requiring that the aforesaid local governmental bodies be apportioned into single-member districts so that all members of the county commission, the school board and the City Council of Pensacola will be elected in a manner that avoids debasing, diluting, minimizing or cancelling out the voting strength of black citizens. Plaintiffs also seek an award of their attorneys' fees and costs and other general equitable relief.

Many of the facts and much of the law in these two cases are the same. Because this is so, to avoid repetition, one memorandum decision containing findings of fact and conclusions of law will be entered in the consolidated cases. Varying factual matter and points of law between the cases will, to the extent necessary, be dealt with separately in this decision.

THE BACKGROUND OF THE THREE ELECTION SYSTEMS

The Board of County Commissioners is the legislative and governing body of Escambia County. The board is composed of five members who serve for four years staggered terms and receive annual salaries of $20,402.88. Although they each must run for numbered places corresponding to the individual districts in which they live, repectively, they are elected at-large by the qualified voters of the entire county. Thus they must each run for office in a single district covering approximately 657 square miles (fifty-one miles in length) with a population of 205,334 in 1970 and a projected population of 269,508 in 1980. 1970 United States Census. There is no majority vote requirement to be elected, although no one has ever been elected without a majority. Political parties given major party status by the state are required to hold primaries in which only party members vote. Candidates also run at-large for numbered places in the primaries, and a majoriy vote is required for the nomination.

The School Board of Escambia County is the local governmental body charged with organizing and controlling the public schools of the School District of Escambia County. The School Board is composed of seven members who serve four year staggered terms. Five of the members

must reside in residency districts; two may reside anywhere in the county. All of them run for numbered places and are elected at-large in the county just as the county commissioners are. There is no majority vote requirement, but no one has been elected without a majority. The party nominating procedure is identical to that of the county commissioners.

The Pensacola City Council is a ten-member panel which serves as the city's policymaking body. The members must run for numbered places, two from each of five wards in which they must reside. They must, however, run at-large in a city with a projected 1980 population of 62,547 (59,507 in 1970). 1970 United States Census. Elections are nonpartisan with a majority vote requirement.

The board of county commissioners and school board election system had their genesis in the midst of a concerted state effort to institutionalize white supremacy. Until 1901, the county commissioners were appointed by the governor. The evidence shows that appointment was favored over election to ensure against the possibility that blacks might be elected in majority black counties. Efforts to keep blacks out of government at the county level began during Reconstruction and were greatly intensified during the state's "redemption" by white Democrats. To ensure that blacks were not elected in majority black counties, county commissioners were appointed by the governor from 1868 to 1901. The poll tax was instituted in 1889 to disenfranchise blacks. 1889 Fla. Laws, ch. 3850, § 1. Although black voter registration remained high, at least in some parts of the state, up until the turn of the century, enough blacks were disenfranchised to permit the state to allow at-large election of county commissioners, Fla. Const., art. 8, § 5 (1901), and the members of the newly

created boards of public instruction (counterpart of today's school boards).[1] 1895 Fla. Laws, ch. 4328.

Black participation in the electoral process was further hampered by the Jim Crow laws and the exclusion of blacks from the Democratic Party, both of which began in 1900. A few years later, the state provided for primary elections of county commissioners and board members in which the candidates were elected from single-member districts. 1907 Fla. Laws, ch. 5697, § 1. By that time the white primary system, effectively disenfranchising black voters, was firmly established. The resulting anomaly between having district primary elections and at-large general elections worked, not surprisingly, to the unique disadvantage of blacks. Since blacks could not vote in the Democratic Primary district elections, they were forced to challenge white Democratic nominees in at-large elections in which blacks had no voter majorities. In effect, the white primary was the election. Because blacks were excluded it was finally struck down by the Florida Supreme Court in 1945. *Davis v. State ex rel. Cromwell,* 156 Fla. 181, 23 So.2d 85 (1945).

The at-large concept was thereafter instituted in the primaries. In the case of the School Board, the legislature enacted such a requirement in the very first legislative session after the white primary was struck down, providing for at-large elections for both general and primary elections. Fla. Stat. §§ 230.08, .10 (1977). County commissioners continued to be nominated by district elections until 1954 when the anomaly between single-member district primary elections and at-large general elections was struck

[1]Members of the boards of public instruction were initially, in 1893, elected from single-member districts. There is no explanation for the quick change to at-large elections in 1895.

down by the Florida Supreme Court as contrary to the state's constitution. *Ervin v. Richardson,* 70 So.2d 585 (Fla. 1954).

To bring things up to date, there was a change in 1976 which added to the school board the two seats having no residence requirement. 1976 Fla. Laws, ch. 76-356. The purpose behind this change was avowedly to pack the board to make it more sympathetic to the white majority respecting a racial issue at a local school concerning the use of the nickname "Rebels." The change was in response to a board vote on that issue which coincided with the interests of the black community rather than the white. Although one area legislator stated that the change was unrelated to the school controversy, his testimony was convincingly impeached. Furthermore, evidence, unrefuted, of statements by other legislators shows this was the purpose. One legislator even told a board member he would block the change if the board would reverse its position on the "Rebel" issue. The board did not. It is also interesting to note that board members' salaries were reduced. Although two local civic organizations had been suggesting the change from five to seven members for some time[2] as a counterpart to having an appointed rather than elected school superintendent, the latter proposal was submitted separately for voter approval and was rejected.

In Florida a change from a five to seven-member board usually accompanies a change from elective to appointive superintendent. Yet the two proposals were not submitted to the electorate as a package by the legislative delegation.

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[2]They did so for "good government" reasons, although in so doing they gave no consideration to possible impact on black votes. The racial motivation here was found in the legislative delegation.

The only evidence presented bearing on their reason for not so doing was the "packing" of the board. The board, in challenging the action, urged this contention upon the Supreme Court of Florida. In holding against the board, that court addressed this contention by stating only that "[t]he political motivations of the legislature, if any . . . are not a proper matter of inquiry for this Court." *School Bd. of Escambia County v. Florida,* 353 So.2d 834, 839 (Fla. 1977).

While today in Florida there are some counties having seven-member boards, Escambia County is the only one having both a seven-member board and an elective superintendent.

In a more recent development, the county commissioners have twice, in 1975 and 1977, appointed committees to study the advisability of charter government for the county. Both committees recommended a change to single-member districts. Blacks in the community also argued in favor of the change. The commissioners, however, rejected the change and did not permit the electorate to vote on that provision. The commissioners' decision was unanimous even though one commissioner had served on one of the committees and joined in the recommendation of single-member districts. The commissioners testifying in this case were also unanimous in their rationale. They stated that single-member districts would cause commissioners to cease serving the interests of the county and concern themselves only with their districts.

Like the state, the City of Pensacola adopted the white primary and Jim Crow ordinances in the early 1900's when black voter registration and participation was high. Black registration and participation was, however, steadily reduced until the late 1930's. In 1931, the city adopted the council-manager form of government which is presently in

effect. At that time, when the poll tax and white primary were in effect and blacks were politically impotent, five of the ten councilmen were elected from single-member districts.

Times changed. The poll tax was repealed in 1937, the white primary was abolished in 1945 and black registration made dramatic rises into the 1950's. In 1955 the first black sought office in the Ward 2 single-member district and ran a close race, losing to the incumbent who served as mayor. That election caused concern among members of the council, and in 1956 Ward 2 was gerrymandered to bring in more whites.

By 1959, the council decided to change the election system to require all councilmen to run at-large. The testimony of a former councilman and remarks made by another former councilman indicate that race was a motivating factor in the final decision. The council thus called upon their local state legislators to introduce the change. The change was enacted into law and approved by the electorate that same year. 1959 Fla. Laws, ch. 59-1730.

Plaintiffs challenge the city's election system, along with those of the board of county commissioners and school board, arguing that each dilutes the votes of their respective black electorates. This type voting dilution case has been thoroughly treated by the Fifth Circuit in four recent cases. *Nevett v. Sides, (Nevett II)*, 571 F.2d 209 (5th Cir. 1978); *Bolden v. Mobile,* 571 F.2d 238 (5th Cir. 1978); *B.U.L.L. v. Shreveport,* 571 F.2d 248 (5th Cir. 1978); *NAACP v. Thomas County,* 571 F.2d 257 (5th Cir. 1978).

The court in *Nevett II* restated an earlier mandate that in cases such as this, of "qualitative reapportionment," a district court must consider certain factors set out in *Zimmer v. McKeithen,* 485 F.2d 1297 (5th Cir. 1973) (en

banc), *aff'd sub nom, East Carroll Parish School Bd. v. Marshall,* 424 U.S. 636 (1976). These factors were summarized in *Nevett II* as follows:

> The court in *Zimmer* established two categories, one containing criteria going primarily to the issue of denial of access or dilution, the other containing inquiries as to the existence of certain structural voting devices that may enhance the underlying dilution. The 'primary' factors include: the group's accessibility to political processes (such as the slating of candidates), the responsiveness of representatives to the 'particularized interests' of the group, the weight of the state policy behind at-large districting, and the effect of past discrimination upon the group's participation in the election system. 485 F.2d at 1305. The 'enhancing' factors include: the size of the district; the portion of the vote necessary for election (majority or plurality); where the positions are not contested for individually, the number of candidates for which an elector must vote; and whether candidates must reside in subdistricts.

571 F.2d at 217 (citations omitted).

The court thus makes the following findings of fact under each of the above criteria for the three governmental systems involved in this case:

ACCESSIBILITY

There are no slating organizations which serve to bar blacks from participating in the election systems of the county or city. No impediments are thrown in the way of blacks to register and vote. Active efforts are made to encourage eligible citizens, both black and white, to register

and to vote. The percentage of blacks registering to vote has steadily increased in recent years. Today there is no significant difference between blacks and whites in that respect in the county, although there is in the city. The evidence shows, however, that there are other barriers in each system which effectively operate to preclude access for blacks.

Although blacks constitute 20% of the county's population and 17% of its registered voters, no black has ever been elected under the county's two at-large election systems. Blacks have run time and again, and always lost. Former black candidates claim that they are frustrated and will not run again because blacks cannot win. Their frustration is evidenced by the fact that though several blacks have in the past run for the board of county commissioners, none has sought the office since 1970. Since 1970 blacks have run for the school board, but there they are not faced, as they are with the county commission, with the requirement of a filing fee of approximately $1,000.00. The evidence further shows that the number of blacks seeking both offices in recent years is far lower than one would expect based on their percentage of the population. The fact that they cannot win is evidenced by an analysis of the election returns.

There is in Escambia County a consistent racially polarized or bloc voting pattern which operates to defeat black candidates. There is in the county an active Ku Klux Klan which has run at least one candidate for office and obtained a significant number of votes.[2] More importantly, however, there is an even larger bloc of white voters who, like almost all black voters, consistently vote

[2]The 3,000 votes that candidate received were larger than the margin in which black candidates were defeated in several close races.

for the candidate of their race whenever black candidates face white candidates.

The complete record of county elections since 1955 was brought before the court. The first black person to run for a countywide office was John Reed, who was a candidate for the Escambia County Commission in May, 1966. He failed to make the runoff in the Democratic Primary. The R^2 coefficient of the correlation between Mr. Reed's vote returns and race[3] was 0.98. The first black person to seek election to the Escambia County School Board was Otha Leverette in 1970. Rev. Leverette got the Democratic Party nomination without opposition; no other candidates qualified for this place. Some efforts were made to hide the fact he was black until the qualification date passed. But Leverette was beaten in the general election by a white Republican candidate, Richard Leeper. It was the first time in the modern history of Escambia County that a Republican had won any countywide office. Mr. Leeper received 22,523 votes even though there were at that time only 7,268 Republicans registered. There were 67,297 whites and only 13,037 blacks registered to vote. The R^2 coefficient for the correlation between Leverette's vote and race was 0.76, indicating a severely racially polarized vote. Richard Leeper had received only 10,712 votes in his race against a white Democratic candidate, Kirkland, in the 1966 school board general election.

This pattern of black candidates losing in racially polarized elections continues to the present. Appendices A and B summarize the results of all county commission and school board races in which there was a black candidate,

[3]Percentage of variation in the vote attributable to the race of the registered voters by precinct.

indicating votes received, the number of black and white registered voters and the R^2coefficient for the correlation between percentage of votes received by the black candidate in each precinct and the percentage of blacks among registered voters in each precinct.

These returns and regression statistics were analyzed by political scientists. The analyses focused upon voting returns from precincts which were 95% or more of one race. These returns, combined with regression statistics on all precincts, showed that whenever a black challenges a white for countywide office, a significant majority of the whites who vote will consistently vote for the black's opponent. Sixty percent or more of the whites will do so in most cases. There were some differences in the testimony of plaintiffs' experts and defendants' expert. For example, the defendants' experts' approach to statistical analyses of polarization was somewhat different from that of plaintiffs' expert. Nonetheless, both found racial polarization in most, if not all, elections in which blacks ran.

Even though turnout among black voters is as high as that among white[4] when black candidates run (it is regrettably low for both races), and black voters vote almost unanimously for the black candidates, black candidates cannot attain a majority of the votes in the county because of the numerical inferiority of blacks combined with the white bloc vote. Several prominent white politicians acknowledged this fact.

The situation is much the same respecting the city. Although blacks constitute 33% of the city's population

[4]Voter turnout among blacks is significantly lower when the field or pair of candidates is all white.

and 23% of its registered voters, with two noteworthy exceptions, black candidates have been denied office by the white bloc voting. All city election returns since 1955 were analyzed in the same manner as the countywide returns and again it was shown that most white voters showed consistent preference for white candidates over black candidates resulting in consistent losses and frustration for the minority candidates.

The first time in present memory that a black person sought elective office in the city was 1955 when Charlie Taite ran a close race against Admiral C.P. Mason in a single-member district in what was then Ward 2. In 1963 Dr. Donald Spence, a black dentist, ran for the city council seat designated Ward 4, Group 2. He was the second highest vote getter in the first election, trailing the first place finisher, Soule, by 1,639 votes. There was an extremely high racial polarization of the votes; votes for Dr. Spence correlated with the percentage of blacks registered in each precinct with an R^2 of 0.95. Subsequently, Dr. Spence was defeated by Mr. Soule in a runoff by a margin of 2,829 votes. Black candidates, A.R. Jones and W.R. Hendrieth, were also defeated in at-large voting, without runoffs, in their bids for city council in 1965. Again the voting was highly racially polarized, with R^2's of 0.98 and 0.97 indicating the correlation between the black candidates' votes and race of the registered voters. Appendix C summarizes the results of the city races in which black candidates ran.

There have been only two exceptions to the white bloc vote in city elections. Two blacks, Dr. Spence and Hollice Williams, have been appointed by the council to fill vacant council seats and thereafter were both winners in their bids for reelection. The evidence strongly suggests that the absence of the white bloc vote against these two candidates

is due to the fact that both were chosen and thereafter received public and private white political support. Indeed, one of the two had run for the council prior to his appointment and was then soundly defeated by the usual white bloc vote. This effect of endorsement by community leaders is a common political phenomenon which is called "cuing." *See* V.O. Key *The Responsible Electorate.*

Not all whites vote against blacks. In every race blacks have received some white support. But the city, like the county, is, by and large, a race conscious society. There is an established pattern of sufficient polarized voting to regularly defeat black candidates. White candidates do actively seek the votes of blacks. The studies of voter turnouts indicate, however, that when whites run against whites, black voter turnout drops, indicating a lack of interest by blacks in the candidates. Defendants' expert admitted that this may indicate that blacks view the choice of white candidates as irrelevant to their interests. White solicitation of black votes is not controlling here. As the Fifth Circuit held in *Bolden:* "Although failure of black candidates because of polarized voting is not sufficient to invalidate a plan, . . . it is an indication of lack of access to the political process." 571 F.2d at 243 (citations omitted).

It was shown at trial that access by blacks is further inhibited by filing fees (5% of the salaries of county commissioners and school board members; $50.00 for city councilmen).

RESPONSIVENESS

Plaintiffs were able to show that the county commissioners were unresponsive in two areas. The commissioners have failed to appoint any more than a token

number of blacks to its committees and boards. The black population representing 20% of the county is thus served by an all-white board of commissioners which depends on virtually (95%) all-white advisory panels. A second possible area of unresponsiveness has been housing policy. Special studies have indicated there may be housing discrimination within the county which has been ignored by the commissioners.

By and large, the commissioners were not shown to be unresponsive to the needs of the black community. Their efforts in employment and public recreation were impressive. It was also shown that the commissioners listen to and act upon requests and complaints by blacks. There was no significant discrepancy shown between service to blacks and whites.

The school board was not shown to be unresponsive to the needs of blacks. Its discipline policies were shown to be fair and sensitive to racial concerns. In a severe racially polarized issue involving the use of the nickname "Rebels," the board showed sensitivity to the desires of the black community. No discrimination was shown in administrative appointments.

The city council, like the board of county commissioners, has made a poor showing respecting appointments and housing policy. Only three of the nineteen advisory committees or boards have any black members, though blacks make up 33% of the city's population. Housing discrimination in the city has evoked no response from the council. The council has, however, been shown to be as responsive in providing services for blacks as it does for whites, and the court was impressed with the sincerity of its efforts in the area of employment. The city has investigated and acted upon complaints from the black com-

munity respecting matters such as police brutality. The plaintiffs failed to show that the city council was generally unresponsive to the needs of the black community.

STATE POLICY

The policies behind the at-large systems will be more fully discussed in the court's findings on the intent behind the official action setting up the present election systems. Suffice it to say at this point that the evidence shows a tenuous policy behind the at-large requirement of each system. At-large requirements have been in effect for general elections of county commissioners and school board members since 1901 and 1895, respectively. However, in the primaries, which were then tantamount to election, the commissioners were elected in single-member districts from 1907 to 1954, and school board members from 1907 to 1947. Half the city council was elected from single-member districts until 1959. Moreover, the evidence shows, as will be more fully developed in the court's findings on intent, that there were racial motivations connected with the at-large requirements of each of these election systems.

PAST DISCRIMINATION

State enforced segregation and discrimination have helped create two societies in the city and county – segregated churches, clubs, neighborhoods and, until a few years ago, schools. These laws left blacks in an inferior social and economic position, with generally inferior education. The lingering effects upon black individuals, coupled with their continued separation from the dominant white society, have helped reduce black voting strength and participation in government. Past

discrimination has helped create bloc voting, a failure of white candidates to arouse interest among blacks and a failure of the city and county governing bodies to appoint blacks to advisory committees and boards. In explaining his failure to appoint blacks to such advisory bodies, the former city mayor stated that the qualified black members of the community were not as visible to him as were the white members. Another white former city council member referred to the black and white communities as the black and white "sides of the fence." That fence, largely the result of past discrimination, is a basic cause or contributing factor to the fundamental problems involved in this suit. The racially polarized voting patterns, resulting from the prior state enforced segregation of the races, and the separate white and black societies it left behind, continue to exist.

ENHANCING FACTORS

Both the city and county are large election districts. The city has a projected population of over 62,000 for 1980. The county's projected population for that year is over 269,000, and it is geographically large (657 square miles, fifty-one miles in length).

There is no majority vote requirement in the general elections for county commissioners and school board members. There is, however, a majority requirement in the primaries. *See White v. Register,* 412 U.S. 755 (1973). Moreover, as a practical matter, no one has in recent history won a general election without a majority. There is a formal majority requirement for city councilmen.

There is no anti-single-shot requirement in the three election systems, but candidates do run for numbered places. This means that blacks are always pitted in head-

on-head races with white candidates, and that the black community cannot concentrate its votes in a large field of candidates.

There are residency requirements for all county commissioners, five of the seven school board members and all city councilmen.

THE AGGREGATE

The court in *Nevett II* restated the basic principle that the findings under the *Zimmer* factors must be weighed and that they must point to dilution "in the aggregate" to support such a finding. 571 F.2d at 217, citing *Hendrix v. Joseph,* 559 F.2d 1265 (5th Cir. 1977); *David v. Garrison,* 553 F.2d 923, 929 (5th Cir. 1977); *Nevett v. Sides,* 533 F.2d 1361, 1365 (5th Cir. 1976); *Zimmer,* 485 F.2d at 1305.

The findings under the factors are in summary form as follows:

(1) Blacks are denied access to the political processes of the county and city because of the interaction of the polarized voting patterns with each of the present at-large election systems. Blacks are further frustrated by the filing fee requirements of the three systems.

(2) The three governmental units have been generally responsive to the needs of the black community. Though two were lacking in appointments of blacks to advisory boards and committees, and in housing policies, the systems cannot, on the whole, be found unresponsive.

(3) The state and city policies behind the at-large requirement are tenuous and to some degree rooted in an intent to discriminate.

(4) Past discrimination has created barriers to the full participation of blacks in the present political processes.

(5) The problems faced by blacks seeking access to the political processes are enhanced by the size or the at-large districts involved, the practical necessity or legal requirements of getting a majority vote to be elected, and the requirement that candidates run in numbered places.

When weighed together, all these factors demonstrate a dilution of black voting strength. The finding of general responsiveness of each governmental entity does not foreclose this conclusion. The court in *Nevett II*, 571 F.2d at 223 and in the *Shreveport* case, 571 F.2d at 254, did stress the importance of that factor in the context of inferring intentional discrimination in the maintenance of the at-large system. If such intent is to be inferred in the operation of the system, it is clear that responsiveness is a key indicator. The effect of dilution, however, may exist apart from the unresponsiveness of politicians. In the *Zimmer* case, dilution was found even though there was no proof of unresponsiveness.[5] 485 F.2d 1306-07. The Fifth Circuit has not held, as defendants contend, that the purpose of the *Zimmer* test is to measure the necessity of official unresponsiveness to black concerns or that dilu-

[5]This court does not read footnote 26 to mean that if it can be measured, unresponsiveness must be proved to establish dilution. 485 F.2d at 1306-07. The court in *Zimmer* did find that the absence of proof as to unresponsiveness might be explained by the type functions performed by the police jury (though not in the case of the school board). The Fifth Circuit also, however, reached a general conclusion that the absence of unresponsiveness could not foreclose a finding of unconstitutional voting dilution. *Id.* This general holding was reaffirmed by the court in *McGill v. Gadsden County Commission*, 535 F.2d 277, 280 n. 7 (5th Cir. 1976).

tion cannot be found unless elected officials are free to ignore the needs of blacks. Although the elected officials in this case generally desire and actively seek the black vote and are generally responsive to grievances aired by black citizens, dilution is evident. This is so because the *Zimmer* criteria ultimately measure not the responsiveness of the politicians, but the responsiveness of the entire political system. Blacks have shown a consistent and near unanimous voting preference for black candidates and have shown a lack of interest in races between white candidates. The effects of past discrimination such as lower registration, inferior socioeconomic status and especially racially polarized voting, when combined with the at-large system and attendant barriers such as filing fees, large districts, majority vote requirements and numbered place ballots, have effectively stifled that strong preference. Although elected officials have been responsive, these factors show, in the aggregate, that the voting strength of blacks is effectively diluted under the present election systems of the county and city.[6]

In addition, the evidence showed blacks to be severely underrepresented in advisory panels of the county commissioners and city council. The *Zimmer* factors are not exclusive in voting dilution cases, *Nevett II*, 571 F.2d at 224; quoting *Kirksey v. Board of Supervisors*, 554 F.2d 139 (5th Cir.) (en banc), *cert. denied*, ____ U.S.____, 920 S.Ct. 412 (1977), and the lack of black appointees has independent significance in this case because of the absence or near absence of blacks in elected positions. With such a

[6]The state policy criterion was not of major significance in this finding of the effect of dilution. It is, however, probative of intent to discriminate, *Nevett II*, 571 F.2d at 224, and is a part of the court's analysis of that issue.

paucity of black elected and appointed representatives, blacks are excluded from almost all positions of responsibility in the governmental policymaking machinery. Although it is not necessary to the finding of dilution in this case, the court finds that the lack of black appointees exacerbates the inability of blacks to participate fully in the political process and is further evidence of dilution.

The finding of dilution on the part of the city's election system is not weakened by the fact that two blacks have been elected to the council. The court in *Zimmer* held that election of blacks did not necessarily indicate access to the system. 485 F.2d at 1307. The court noted that the circumstances of particular elections might indicate other factors at work. *Id.* In the case of the city, the only blacks who were elected were two men previously appointed and publicly endorsed by the white city leaders. That the white political establishment can at times choose a black man of its own liking and help get him elected certainly does not indicate that black votes are not diluted. Such access as may be given or taken away by the white politicians is not a real access to the political system which is possessed by the black community. *See id.; Graves v. Barnes,* 343 F. Supp. 704, 726 (W.D. Tex. 1972). Though the adoption of blacks by the city council and white establishment was well intentioned,[7] the resulting appearance of access by blacks is a facade which cannot hide the impotence of black voters in electing candidates of their choice.

INTENT

An at-large election system which operates to dilute the vote of black citizens is not necessarily violative of the Constitution. It must also be shown that discriminatory

[7]The testimony at trial in this respect was convincing to this court.

intent was a motivating factor in the enactment of the system or is a motivation in the present maintenance of the system. *Nevett II,* 571 F.2d at 222. Discriminatory intent in the enactment is proved by the criteria set down in *Arlington Heights v. Metropolitan Housing Corp.* 429 U.S. 252, 266-68 (1977). Invidious purposes in the maintenance of the system are proved by the circumstances surrounding the operation of the system and may be inferred from findings under the *Zimmer* factors. *Nevett II,* 571 F.2d at 222.

In *Arlington Heights* the Supreme Court set out several factors indicative of discriminatory intent. They are (1) the effect of the official action, (2) the historical background of the decision, "particularly if it reveals a series of official actions taken for invidious purposes," (3) the sequence of events, (4) substantive and procedural departures, (5) legislative history. 429 U.S. at 266-68. These criteria must be applied to the official act or acts which give rise to the respective election systems in this case.

The at-large requirements of the election system (both general election and primaries) of the board of county commissioners are based on the 1901 amendment to the Florida Constitution. Fla. Const., art. 8, § 5. The historical background of the 1901 amendment includes a general pattern of disenfranchisement and other discrimination at the hands of the state. The other laws of the period relating to selection of commissioners – gubernatorial appointment prior to 1901 and single-member district white primary after 1907 – were clearly race related. The Jim Crow laws were also being instituted in the early 1900's. The sequence of testified that in Pensacola black registration was high in 1900, and it was only thereafter that they were effectively excluded from the political process.

Despite this evidence indicating racial motivation in the 1901 amendment, the conclusion of the Fifth Circuit in *McGill* was reinforced by the conclusions drawn by plaintiffs' own expert historian, Dr. Shofner. For this reason, the holdings of *McGill* should not be disturbed and no discriminatory intent can be found as a motivating factor behind the 1901 amendment.[8]

The present election system of the school board, involving an at-large requirement in both general and primary elections, was enacted by statute in 1947. Fla. Stat.§§ 230.08, .10 (1975). The history and sequence of events strongly suggest racial motivations. From 1907 until 1945 the white primary was in effect. This was a period in which the Jim Crow laws were also in effect and in which the white government was unwilling or unable to prevent a shocking degree of violence and intimidation suffered by blacks at the hands of whites. The state policy of excluding blacks from the primary election was finally declared unconstitutional in *Davis v. State ex rel. Cromwell,* 156 Fla. 181, 23 So.2d 85 (1945). Then in the very first legislative session following the decision, the legislature enacted statutes providing for an at-large requirement in both the general election, 1947 Fla. Laws, ch. 23726, § 9, and the primaries, 1947 Fla. Laws, ch. 23726, § 7. This marked a major substantive change from a system in which all members had been elected from single-member districts in the primaries, which were tantamount to election. The effect of the change was to prevent blacks from running in single-member district primaries which had existed up until that time. It was the testimony of

[8]Though it may have been acting in a race-proof situation in 1091, there is little chance that the legislature would have created single-member districts if blacks could have been elected in them. *See Bolden v. Mobile,* 423 F.Supp. 397 (S.D. Ala. 1976).

plaintiffs' expert historian that the 1947 election system resulted from racial motivations. The evidence of discriminatory motives behind the at-large requirements of the 1947 system is compelling. The court finds that racial motivations were a main force behind the enactment in 1947 of the current at-large election system.

The present council-manager form of government, adopted in 1931, originally provided for five of the ten councilmen to run in single-member districts. Prior to 1931, Pensacola, like most other southern cities, had adopted the white primary and Jim Crow ordinances. In the 1940's and 50's, however, black voter registration made dramatic increases and apprehension about black voting strength was voiced in the community. In 1955 a black man ran a close race against the mayor in one of the single-member districts. In 1956, that district was gerrymandered to bring in more whites. A former councilman who served at that time said the gerrymander was for racial purposes. In 1959 the council requested the area legislators to initiate legislation to make all seats on the council elected at-large. The former councilman again testified that the council's motivations were racial. It was also related that in presenting the proposed change to the area legislators, another former councilman stated that "a salt and pepper council" was not wanted. The legislation was passed that year. 1959 Fla. Laws, ch. 59-1730. When the new system was placed before the voters, the newspaper stated that the "prime" reason for the proposed change was to prevent blacks from being elected. It is clear from the testimony of Governor Reubin Askew, then a member of the Escambia County legislative delegation which presented the legislation, that racial motivation played no part in the legislature's enactment, and that he did not believe at the time race was really a factor in the proposed change.

Governor Askew did not, of course, have the benefit of all the testimony before this court. Race was not a factor in the advocacy of the change by such organizations as the Pensacola Chamber of Commerce and the League of Women Voters. But it was a factor in the recommendation of the council for the change. Governor Askew testified that it was then the practice of the local legislative delegation to enact legislation concerning city government only if the measure was unanimously approved and proposed to the delegation by the city council.

The conclusion of plaintiffs' expert historian that race was a concurrent motivating factor in the 1959 change is inescapable.[9] A preponderance of the evidence shows that race was a motivating factor.

In the case of the city, as with the school board, racial motivation was not the only factor behind the change. The existence of other motivation is not controlling.

The Supreme Court stated in *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265 (1976):

> *Davis* does not require a plaintiff to prove that the challenged action rested solely on racially discriminatory purposes. Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the 'dominant' or 'primary' one. In fact, it is because legislators and administrators are properly concerned with

[9]The fact that the showing of racial motivation is largely focused upon the city council and not the legislators who voted on the proposal is not controlling. Changes in local government were accomplished in a three step process – resolution by the city government, legislative proposal, ratification by the electorate. Discriminatory intent at any stage infects the entire process.

> balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.

Discriminatory intent in the maintenance of the at-large requirement of the election systems, though often more difficult to prove, may be shown by circumstantial evidence. It may be inferred from the aggregate of the *Zimmer* factors.

Thus, an inference of intent may be raised. A finding of unresponsiveness is of "momentous" importance in inferring a present intent. *B.U.L.L. v. Shreveport,* 571 F.2d at 254. Unresponsiveness has not been found in any of the three systems. Such does not, however, preclude a finding of present discriminatory intent in maintenance.

There is other circumstantial evidence surrounding the present maintenance of the at-large requirement in the election of county commissioners and school board members.

The county commissioners' two charter government committees, appointed in 1975 and 1977, both unanimously recommended a change to single-member districts. Ignoring the expressed concerns of the black voters and the recommendations of both study committees, however, the county commissioners struck the single-member districts from the charter referendum. The electorate was not given the opportunity to decide on the election changes; the charter referendum was defeated.

The four county commissioners testifying at trial all

claimed that they struck single-member district elections from the proposal for reasons unrelated to race. Each said it was his personal belief that all of the voters of the county should be allowed to vote on each of the commissioners because they felt that the at-large requirement made the board more responsive to the needs of the community. No one of them gave any other reason, and none expressed any concern about the effect the change would have on the opportunities of candidates preferred by blacks.

One commissioner expressed the opinion that commissioners elected solely by the voters of their districts would not have to be fair in the apportionment of funds to other districts. But he could not explain how this result would necessarily occur when the commissioners were sworn to represent the interests of the whole county.

One of their members had served on one of these committees and agreed in the report submitted with the recommendation for single-member districts. Yet when the report went to the commission he changed his position and voted against it. He gave no adequate explanation of why he changed his position.

The testimony also showed that the residence district of each commissioner is more or less regarded at the district of that commissioner for which he has responsibility and for whose needs he is the particular advocate on the commission. As an example of the commission's practice, road funds are arbitrarily allocated with 20% going to each residence district, and the individual members with greater needs for their particular districts must convince other commissioners to give up parts of their shares. No testimony was presented showing why the commission, representing the county at-large, did not initially itself try as a body to spend road funds where needed in the county

without regard to residence districts. Their expressed concern about countywide elections and representation does not stand foursquare with the present operation of the commission and its business.

In their post-trial memorandum, defendants admit that the rejection of the single-member district aspect of the charter proposal "reflects the commissioners' desire to maintain their incumbency." This was also the court's impression at trial. Each of these commissioners had been elected in countywide elections. They could not know how they would fare in single district elections. Yet it is apparent that in such elections one or more of them might be replaced by blacks.

To this court the reasonable inference to be drawn from their actions in retaining at-large districts is that they were motivated, at least in part, by the possibility single district elections might result in one or more of them being displaced in subsequent elections by blacks.[10]

This conclusion is bolstered by the findings under the *Zimmer* factors that black voting preferences for blacks cannot be registered in the present system and black candidates are otherwise denied access to that system. That their motivations may be selfish rather than malicious toward blacks does not alter the conclusion that their intent was to continue the present dilution of black voting strength. The present at-large election system for county commissioners is being maintained for discriminatory purposes.

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[10]It was stipulated that a fairly constructed single-member district system for the election of Escambia County Commissioners and Escambia County School Board members would produce one black majority county commission and school board district each out of five.

The 1976 change in the school board's election system was avowedly to pack the board to make it more responsive to the white majority on a particular racially polarized issue. The evidence showed that the seven member proposal was used as a threat by area legislators who knew that the white majority would have its way at the polls. This is a telling indication of the legislators' and community's recognition and use of the at-large system as a method of rendering black voters politically impotent to the desires of the white majority. This action by the legislators, in conjunction with this court's findings under the *Zimmer* factors, shows that the present at-large system of electing school board members is being maintained, at least in part, by racially discriminatory motives.

This court cannot find, based on the evidence before it, that the city presently maintains its at-large system for discriminatory purposes. The lack of access, the tenuous policy, the present effects of past discrimination and the enhancing factors afford room for inference of such present discriminatory maintenance as they do with the commission and school board. With the city, however, there is no recent racially motivated action corroborating and supporting a finding of present racially motivated maintenance as there is with the commission and school board. Based on the evidence here presented, without a finding of unresponsiveness, and with no evidence justifying or corroborating an inference of intent drawn from the *Zimmer* factors, the court cannot find that the city's at-large system is presently intentionally maintained as a vehicle for racial discrimination.

In sum, a preponderance of the evidence shows that the election system of the board of county commissioners effectively dilutes the votes of black citizens. Though the court does not conclude that the system was enacted for

invidious purposes, the evidence does show that it is being maintained at least in part for discriminatory reasons. Thus, the present election system violates the fourteenth and fifteenth amendments.

The evidence shows that the election system of the school board dilutes the votes of black citizens. The court finds discriminatory intent in both the enactment and maintenance of the present system. That system violates the fourteenth and fifteenth amendments.

Insofar as the city council is concerned, there is no current evidence respecting the present maintenance of the system such as there is with the commission and the school board. However, the present election system of the city council has been shown to have the present effect of diluting the votes of black citizens. As pointed out previously, racial motivations played a part in the change to a uniform at-large requirement. The system violates the fourteenth and fifteenth amendments.

This court is cognizant of the general principle that federal courts should avoid decision on constitutional grounds if adequate statutory grounds are available. In *Bolden v. Mobile,* 571 F.2d 238 (5th Cir. 1978), the court, in its footnote 3, page 242, pointed out that the statutory claim here at best is problematic. This court concludes, as did the court in *Parnell v. Rapides Parish School Bd.,* 425 F.Supp. 399 (W.D. La. 1976), that the interest of judicial economy and the need for prompt final resolution dictate that the court here reach the constitutional questions. As the footnote in *Bolden* points out, under similar circumstances, the Supreme Court has avoided an abusive application of the constitutional-decision-avoidance rule.

Plaintiffs also seek relief under the Civil Rights Act of

1970, 42 U.S.C. 1971(a)(1) and under the Voting Rights Act of 1965, 42 U.S.C. § 1973.

Throughout this litigation the parties to this litigation have provided this court with well prepared and thorough legal memoranda. Influenced perhaps, however, by the *Bolden* court's treatment of a similar situation, 571 F.2d at 242 n. 3, they have provided this court with no memoranda addressed to these statutory claims. As the appellate court pointed out in that footnote, the statutory claim is at best problematic. Like the appellate court, this court knows of no successful dilution claim expressly founded on 42 U.S.C. § 1973. Judge Wisdom, in his concurring opinion in *Nevett II,* appeared to have no doubt of its application and discussed the question whether intent was a necessary element of a claim under the statute.

The plaintiffs here have not established a claim for relief under the Civil Rights Act of 1870, 42 U.S.C. § 1971(a)(1). That section concerns itself only with the entitlement to cast one's vote at elections, and such is not presented in this voting dilution suit.

Respecting 42 U.S.C. § 1973, the court concludes that the plaintiffs have established claims for relief under this section. This section, passed to carry out the purpose of the fifteenth amendment, tracks its language in respect to denial or abridgement of the right to vote on account of race.

The findings in this case which constitute violations of fifteenth amendment must also constitute violations of this statute. The right to vote protected by the statute has, like that of the fifteenth amendment, been given a broad meaning. *Allen v. State Bd. of Elections,* 393 U.S. 544 (1969).

Inasmuch as the court has found the evidence of intent in its consideration of the constitutional questions involved, it need not and does not decide whether proof of intent is required under 42 U.S.C. § 1973.

IN SUMMATION

Florida, like other southern states, has a long historical background of black race discrimination in its government. The demise of its poll tax and other Jim Crow laws and of its white primary served as catalysts in impelling it toward a society organized and governing itself as one free of racial motivations. More importantly, there has been, particularly in more recent years, a growing awareness among many responsible white citizens that race discrimination not only has no place in the ongoing progress of the government of our nation, but that improving the lot of the disadvantaged portion of the nation in the long run will benefit all the nation.

That has happened here. Escambia County and Pensacola have come a long way in the past twenty-five or thirty years. But discrimination against blacks, stemming from long years of conscious and deliberate oppression and discrimination against blacks by whites, does not disappear quickly. It is a gradual and ongoing process, and the process is still going on here. The race discrimination that was so manifest in the earlier years in this state, and in this county and city, though diminished, has not yet disappeared.

Because this county and this city have made so much progress in complying with the commands of the Constitution and the law in these recent years, this case is not an easy one to decide.

The conclusion impelled and reached is that at least the preponderance – though not an overwhelming preponderance – of the evidence supports plaintiffs' contentions so that judgment must be entered for them.

One day, hopefully, the time will come in our nation's ongoing progress when we as a people, or at least a sufficient number of us, have so eliminated race consciousness and discrimination from our hearts and minds that such is not reflected in governmental processes and procedures. Then there will be no need for suits such as these. Then there will be no justification for orders such as the ones entered here that interfere with the right of the people to establish for themselves the details of their government because, in doing so, they themselves will have complied with constitutional and legal requirements. As it has not in so many other places in our nation, that day has not yet come to Escambia County and to Pensacola.

REMEDY

The Supreme Court of the United States has laid down the general principle that "when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter." *Conner v. Johnson,* 402 U.S. 690 (1971); *see also East Carroll Parish School Bd. v. Marshall,* 424 U.S. 636 (1976); and *Wallace v. House,* 425 U.S. 947 (1976). In approving single-member districts as a remedy for unconstitutional dilution, even where such a reapportionment required a complete change in a form of government from a city commission to a mayor-council, the Fifth Circuit has reminded the district courts of these principles laid down in their cases.

The Fifth Circuit in *Bolden* stated:

> The district courts have been repeatedly admonished by the Supreme Court to avoid the employment of at-large seats in their remedial plans, unless some special circumstance required that such seats be used.

571 F.2d at 246.

However, these pronouncements of Fifth Circuit antedated the Supreme Court's opinion in *Wise v. Lipscomb*, ____ U.S. ____, 46 U.S.L.W. 4777 (June 22, 1978). In that case it was pointed out that the plan presented by the city was legislative and was not to be viewed as judicial. It distinguished the case from the *East Carroll Parish School Board* case by pointing out that the Dallas City Council validly met its responsibility of replacing the invalid apportionment provision with one which could survive constitutional scrutiny.

Under the holding of the case, when an existing apportionment scheme has been declared to be unconstitutional, it is appropriate whenever practicable to afford a reasonable opportunity for the legislative body itself to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan.

Unlike the situation presented in *East Carroll Parish School Board,* Escambia County and the City of Pensacola have not been brought under the Voting Rights Act of 1965 so that approval of the Attorney General must be obtained for any such legislative changes. Moreover, unlike the situation presented in other cases, the defendants in these cases are ready and willing to assume the responsibility of providing what they believe will be an effective remedy for the dilution found by this court to exist.

In each of these cases the judgments to be entered will require the parties within 45 days after date thereof to submit proposals that they believe provide an effective remedy for the dilution found by this court to exist.

The plaintiffs' claims for attorneys' fees in each of these cases will be determined after a hearing on these issues.

The judgments to be entered will retain jurisdiction for all necessary and proper purposes.

The court concludes that the shortness of time renders it impracticable for the remedial systems, yet to be presented and approved, to be used in the September, 1978 primary election and the subsequent general election this year for the county commission and the school board.

These remedial systems should therefore become effective for the next ensuing primary and general elections which will occur in the year 1980.

There is yet another reason why such remedial systems should not become effective until 1980 insofar as the members of the county commission and the school board are concerned.

The defendant officeholders on such commission and board have each been elected for specific four year terms of office. They were elected prior to institution of this suit, and neither they nor those electing them could reasonably have foreseen this decision. It is reasonable and proper that they should be allowed to finish out the terms for which they were elected.

This does not mean that any elected after this date shall also be allowed to finish out their elected terms. Any candidates seeking election after this date for any of the offices involved may reasonably be considered to have notice

of this decision and of the possibility that because of it the terms to which they are elected may be cut short.

There are some of the defendant county commissioners and school board members whose elected terms will expire this year. However, there are also members serving on both these boards whose elected terms will not expire until the 1980 elections. Postponing the effective date of the remedial systems until 1980 will allow all of these office-holders now serving to finish out the terms for which they were elected.

Inasmuch as the next Pensacola City Council election is in May of 1979, at which time all terms expire, the changes approved by this court could become effective in time for those elections without disturbing or shortening the terms for which present councilmen are elected. Thus the remedial system to be employed insofar as the city council is concerned should become effective in time for its employment in the May, 1979 city council election.

This court believes that the judgments entered will be final judgments from which appeals may be taken. However, in the event such would not be considered an appealable judgment, the court will of its own motion, pursuant to 28 U.S.C. § 1292(b), include in each judgment a finding that the judgment entered involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation.

DATED this 10 day of July, 1978.

/s/ Winston E. Arnow

WINSTON E. ARNOW
Chief Judge

APPENDIX A
Summary of Black Candidacies in County Commission Elections

		Votes	No. Bs. regis.	No. Ws. regis.	R^2 for race
	1966: 1st Primary District 2				
	Cobb	14,592			
	Fredrickson	9,017			
(B)	Reed	8,225	13,250	55,754	0.98
	Ward	4,298			
	1968: 1st Primary District 5				
	Armour	19,168			
	Gindl	8,159			
(B)	Jenkins	9,704	13,214	60,650	0.95
	Whatley	4,901			
	Runoff District 5				
	Armour	24,408			
(B)	Jenkins	14,636	13,214	60,650	0.91
	1970: 1st Primary District 4				
	Davis	8,658			
(B)	Dedmond	7,373	13,037*	67,297*	
	Kenney	19,700			0.85
	District 2				
	Barnes	11,840			
	Cobb	9,557			
	Kelson	9,037			
(B)	Reed	5,240	13,037*	67,297*	

*Includes Republicans and Independents. Total Democrats were 71,803.

APPENDIX B

Summary of Black Candidacies in School Board Elections

		Votes	No. Bs. regis.	No. Ws. regis.	R^2 for race
	1970: General Election				
	Place 4				
	Leeper	22,523			
(B)	Leverette	21,065	13,037	67,297	0.76
	1974: 1st Primary				
	Place 3				
(B)	Jenkins	12,275	13,836	65,129	0.77
	Sanders	10,933			
	General Election				
	Place 3				
(B)	Jenkins	21,098	14,207	79,208	0.87
	Leeper	22,547			
	Place 1				
	Bell	32,612			
(B)	Stallworth	9,673	14,207	79,208	0.69
	1976: 1st Primary				
	Place 4				
	Marshall	16,079			
(B)	Spence	15,956	15,441	85,595	0.91
	Smith	10,717			

	Place 7				
	Bailey	9,765			
	Forester	5,244			
(B)	Jenkins	12,257	15,441	85,595	0.95
	King	1,362			
	Lee	5,606			
	MacGill	5,071			
	Southhard	1,173			
	Runoff				
	Place 4				
	Marshall	29,106			
(B)	Spence	19,176	15,441	86,595	0.91
	Place 7				
	Bailey	26,786			
(B)	Jenkins	20,526	15,441	85,595	0.87

APPENDIX C

Summary of Black Candidacies in City Elections

	Votes	No. Bs. regis.	No. Ws. regis.	R^2 for race
1955: Ward 2				
(B) Charlie L. Taite	765			
C.P. Mason	925			
	1,690			
1963: Ward 4 Group 2				
Booker	851			
Gonzales	1,075	(May 1964)		
Soule	4,717			
(B) Spence	3,078	6,426	19,427	0.95
Tennant	2,045			
	11,766 (45.5%)			
Runoff				
Soule	7,055			
(B) Spence	4,226			
	11,281 (43.6%)			
1965: Ward 2 Group 2				
A.D. Bowman	7,771	(Oct. 1966)		
B.J. Godwin	553			
(B) A.R. Jones	2,740	7,578	17,613	0.98
C.S. Jones, Jr.	3,302			
	14,366 (57.0%)			

	Ward 3				
	Group 1				
(B)	W.F. Hendrith	1,877			0.97
	E.J. Johnston	4,084			
	R.G. MacDonald	4,519			
		10,480 (41.6%)			
	1967: Ward 3				
	Group 2				
	J.E. Frenkel, Jr.	6,808	(April 1968)		
(B)	William F. Hendrieth	3,020	7,177	20,784	0.84
		9,828 (35.1%)			
	1969: Ward 2				
	Group 1				
	Eugene P. Elebash	6,277	(Oct. 1968)		
(B)	William H. Marshall	3,832	5,659	19,470	0.77
		10,109 (40.2%)			
	Ward 3				
	Group 2				
	John E. Frenkel				
(B)	William F. Hendrith	2,120			0.84
	Ward E. King	2,071			
		4,191 (16.7%)			
	1971: Ward 2				
	Group 1				
	Robert Brockett, Jr.	5,233	(Aug. 1970)		
	Robert A. Craighead	400			
(B)	William H. Marshall	2,677	6,795	21,543	0.92
		8,310 (29.3%)			

	Ward 2 Group 2				
(B)	William F. Hendreith	2,008			0.96
	J.J. Alfred	2,286			
	William H. Northrup	3,837			
	Rodney C. Jones	330			
	1971: Ward 3 Group 2				
	John E. Frenkel, Jr.	6,108			0.89
(B)	F.L. Henderson	2,270			
	Ward 5 Group 2				
(B)	Hollice T. Williams	6,225			0.62
	J.C. Adams	1,670			
	Charles Van Wilson	895			
	1973: Ward 3 Group 1		(Oct. 1972)		
(B)	Orellia F. Benjamin	2,334	7,680	26,568	
	W.J. Paulk	2,873			
	Ward 5 Group 2				
(B)	Hollice Williams	Unopposed			
	1975: Ward 4 Group 2				
(B)	Dr. Donald Spence	4,308			0.82
	Robert Gilmore	3,102			
	Ward 5 Group 1				
	Dr. V. Paul Bruno	5,387			0.86
(B)	James L. Brewer	1,824			

Ward 5				
Group 2				0.67
(B) Hollice Williams	5,093			
Sal Ferraro	893			
Chuck Porter	1,599			
1977: Ward 2				
Group 1				
Ann Belleau	2,874			
Rick Fountain	1,455			
Franklin Pryor	2,737			
(B) William Hendreith	1,061	9,245	25,569	0.79
Ward 5				
Group 1				
Mike Bass	4,271			0.82
(B) Ruby Gainer	3,985			
Ward 5				
Group 2				
(B) Hollice Williams	Unopposed			

b. Judgment.

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HENRY T. McMILLAN, et al.,
Plaintiffs,
vs. PCA No. 77-0432

ESCAMBIA COUNTY, FLORIDA,
et al.,
Defendants.

JUDGMENT

Pursuant to and in accordance with Memorandum Decision of this date, it is,

ORDERED AND ADJUDGED as follows:

1. Judgment is hereby entered in favor of the plaintiffs and against the defendants, with costs taxed against the defendants.

2. Within 45 days after this date, the parties will submit proposals that they believe provide an effective remedy for the dilution found by this court to exist.

3. The remedial systems, as finally approved and adopted by this court, shall not be effective for the primary and general elections occurring in 1978, but shall become effective for the next ensuing primary and general elections which will occur in the year 1980.

4. This court retains jurisdiction for all necessary or proper purposes, including but not limited to determina-

tion of the plaintiffs' claims for attorneys' fees after hearing thereon.

5. Pursuant to 28 U.S.C. § 1292(b), the court finds that the judgment here entered involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate decision of the litigation.

DONE AND ORDERED this 10 day of July, 1978.

/s/ Winston E. Arnow

WINSTON E. ARNOW
Chief Judge

APPENDIX C

Judgment in, and Order Denying Appellants' Suggestion of Rehearing En Banc of, *McMillan v. Escambia County*, Florida, 688 F.2d 960 (5th Cir. 1982).

1. Judgment.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

UNIT B

No. 78-3507
80-5011

D.C. Docket No. PCA 77-0432

HENRY T. McMILLAN, ET AL.,
Plaintiffs-Appellees,

vs. PCA No. 77-0432

ESCAMBIA COUNTY, FLORIDA,
ET AL.,
Defendants-Appellants.

Appeals from the United States District Court
for the Northern District of Florida

Before COLEMAN, PECK** and KRAVITCH, Circuit Judges.

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*Former Fifth Circuit case, Sec. 9(1) of Public Law 96-452 – Oct. 14, 1980.

**Honorable John W. Peck, U.S. Circuit Judge for the Sixth Circuit, sitting by designation.

This cause came on to be heard on plaintiffs-appellees' petition for rehearing;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the opinion originally entered by this Court on February 19, 1981 is VACATED in No. 78-3507 concerning the County Commission, and VACATED entirely in No. 80-5011; and the judgment of the said District Court appealed from is AFFIRMED; and that this cause be, and the same is hereby REMANDED to said District Court in accordance with the opinion of this Court;

It is further ordered that defendants-appellants pay to plaintiffs-appellees, the costs on appeal to be taxed by the Clerk of this Court.

September 24, 1982

ISSUED AS MANDATE: NOV. 23, 1982

2. Order.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

No. 78-3507
No. 80-5011

HENRY T. McMILLAN, ET AL.,
Plaintiffs-Appellees,

versus

ESCAMBIA COUNTY, FLORIDA, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Florida

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion SEPTEMBER 24, 5 Cir., 1982, ____ F.2d ____). (NOV 4 1982)

Before COLEMAN, PECK** and KRAVITCH, Circuit Judges.

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*Former Fifth Circuit case, Section 9(1) of Public Law 96-452-Oct. 14, 1980.

**Honorable John W. Peck, U.S. Circuit Judge for the Sixth Circuit, sitting by designation.

PER CURIAM:

(✔) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the Petition for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the Petition for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ Phyllis Kravitch

United States Circuit Judge

APPENDIX D

Notice of Appeal of *McMillan v. Escambia County, Florida*, 688 F.2d 960 (5th Cir. 1982).

No. 78-3507
No. 78-5011

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FILED
NOV 30 1982
Norman E. Zoller
Clerk

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

HENRY T. McMILLAN, *et al.*,
Plaintiffs-Appellees,

v.

ESCAMBIA COUNTY, Florida, *et al.*,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF
FLORIDA

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that defendants-appellants Escambia County, Florida, the members of its Board of County Commissioners and the Supervisor of Elections hereby appeal to the Supreme Court of the United States the September 24, 1982 decision by this Court in the above-captioned action. The suggestion by defendants-appellants of rehearing en banc was denied by the Court on November 4, 1982.

This appeal is taken pursuant to 28 U.S.C. § 1254(2) (1976).

Respectfully submitted,

/s/ Charles S. Rhyne

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Counsel for Defendants-Appellants

APPENDIX E

Constitutional and Statutory Provisions

1. U.S. Const. amend. XIV, § 1.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Fla. Const. art. VIII, § 1.

ARTICLE VIII – LOCAL GOVERNMENT

§ 1. Counties

(a) *Political subdivisions.* The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) *County funds.* The care, custody and method of disbursing county funds shall be provided by general law.

(c) *Government.* Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose.

(d) *County officers.* There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

(e) *Commissioners.* Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five members serving staggered terms of four years. After each

decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected by the electors of the county.

(f) *Non-charter government.* Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) *Charter government.* Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

(h) *Taxes; limitation.* Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.

(i) *County ordinances.* Each county ordinance shall be filed with the secretary of state and shall become effective at such time thereafter as is provided by general law.

(j) *Violation of ordinances.* Persons violating county ordinances shall be prosecuted and punished as provided by law.

(k) *County seat.* In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county in the manner prescribed by law. No instrument shall be deemed recorded in the county until filed at the county seat according to law.
Amended, general election, Nov. 5, 1974.

3. Selected Provisions of Fla. Stat. ch. 125 (1981).

125.01 Powers and duties. –

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power shall include, but shall not be restricted to, the power to: . . .

125.60 Adoption of county charter. – Any county not having a chartered form of consolidated government may, pursuant to the provisions of ss. 125.60-125.64, locally initiate and adopt by a majority vote of the qualified electors of the county a county home rule charter.

125.61 Charter commission. –

(1) Following the adoption of a resolution by the board of county commissioners or upon the submission of a petition to the county commission signed by at least 15 percent of the qualified electors of the county requesting that a charter commission be established, a charter commission shall be appointed pursuant to subsection (2) within 30 days of the adoption of said resolution or of the filing of said petition.

(2) The charter commission shall be composed of an odd number of not less than 11 or more than 15 members. The members of the commission shall be appointed by the board of county commissioners of said county or, if so directed in the initiative petition, by the legislative delega-

tion. No member of the Legislature or board of county commissioners shall be a member of the charter commission. Vacancies shall be filled within 30 days in the same manner as the original appointments.

125.62 Charter commission; organization.–

(1) A charter commission appointed pursuant to s. 125.61 shall meet for the purpose of organization within 30 days after the appointments have been made. The charter commission shall elect a chairman and vice chairman from among its membership. Further meetings of the commission shall be held upon the call of the chairman or a majority of the members of the commission. All meetings shall be open to the public. A majority of the members of the charter commission shall constitute a quorum. The commission may adopt such other rules for its operations and proceedings as it deems desirable. Members of the commission shall receive no compensation but shall be reimbursed for necessary expenses pursuant to law.

(2) Expenses of the charter commission shall be verified by a majority vote of the commission forwarded to the board of county commissioners for payment from the general fund of the county. The charter commission may employ a staff, consult and retain experts, and purchase, lease, or otherwise provide for such supplies, materials, equipment and facilities as it deems necessary and desirable. The board of county commissioners may accept funds, grants, gifts, and services for the charter commission from the state, the Government of the United States, or other sources, public or private.

125.63 Proposal of county charter. – The charter commission shall conduct a comprehensive study of the operation of county government and of the ways in which the conduct of county government might be improved or reorganized. Within 18 months of its initial meeting, unless such time is extended by appropriate resolution of the board of county commissioners, the charter commission shall present to the board of county commissioners a proposed charter, upon which it shall have held three public hearings at intervals of not less than 10 nor more than 20 days. At the final hearing the charter commission shall incorporate any amendments it deems desirable, vote upon a proposed charter, and forward said charter to the board of county commissioners for the holding of a referendum election as provided in s. 125.64.

125.64 Adoption of charter; dissolution of commission. –

(1) Upon submission to the board of county commissioners of a charter by the charter commission, the board of county commissioners shall call a special election to be held not more than 90 nor less than 45 days subsequent to its receipt of the proposed charter, at which special election a referendum of the qualified electors within the county shall be held to determine whether the proposed charter shall be adopted. Notice of the election on the proposed charter shall be published in a newspaper of general circulation in the county not less than 30 nor more than 45 days before the election.

(2) If a majority of those voting on the question favor the adoption of the new charter, it shall become effective January 1 of the succeeding year or at such other time as

the charter shall provide. Such charter, once adopted by the electors, may be amended only by the electors of the county. The charter shall provide a method for submitting future charter revisions and amendments to the electors of the county.

(3) If a majority of the voters disapprove the proposed charter, no new referendum may be held during the next 2 years following the date of such disapproval.

(4) Upon acceptance or rejection of the proposed charter by the qualified electors, the charter commission will be dissolved, and all property of the charter commission will thereupon become the property of the county.

Office-Supreme Court, U.S.
FILED
AUG 8 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1295

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX
VOL. I – Pages 1-324

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Appeal Docketed February 2, 1983
Probable Jurisdiction Noted April 18, 1983

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Memorandum Decision of the United States District Court of the Northern District of Florida in *McMillan* v. *Escambia County, Florida* PCA No. 77-0432 (N.D. Fla., Sept. 24, 1979) B-66a

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DOCKET SHEETS
District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION

HENRY T. McMILLAN, ROBERT CRANE, CHARLES L. SCOTT, WILLIAM F. MAXWELL and CLIFFORD STOKES, Plaintiffs,	:	
vs.	:	Civil Action No. 77-0432
ESCAMBIA COUNTY, FLORIDA; GERALD WOOLARD, KENNETH KELSON, ZEARL LANCASTER, JOHN E. FRENKEL, JR., MARVIN BECK, individually and in their official capacities as members of the BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY; SCHOOL DISTRICT OF ESCAMBIA COUNTY: THE SCHOOL BOARD OF ESCAMBIA COUNTY: PETER R. GIND, CAROL MARSHALL, RICHARD LEEPER, LOIS SUAREZ, A.P. BELL, FRANK BIASCO and JAMES BAILEY, individually and in their capacities as members of the ESCAMBIA COUNTY SCHOOL BOARD: JOE OLDMIXON, individually and in his official capacity as SUPERVISOR OF ELECTIONS OF ESCAMBIA COUNTY Defendants	:	FILED Mar 18 OFFICE OF CLERK U.S. DISTRICT CT. NORTH DIST. FLA. PENSACOLA, FLA.

CAUSE Suit in equity arising out of Constitution & action for declaratory judgment under 28 USC 2201 & 2202

UNITED STATES DISTRICT COURT DOCKET
DC-III (REV. 1/75)

DATE	NR	PROCEEDINGS
3/18/77	1	Filed: 0+30 complaints (civil rights) alleging violation of election laws of Escambia County, Florida & seeking declaratory judgment of enjoinment from holding, supervising or certifying results of elections for School Board & County Commissioners & award of attys fees and costs
3/18/77		Issued: 0+31 summons and del. same to US Marshal w/30 copies of complaint & USM/285 service forms on 3/21/77
3/18/77		Filed: Cert. of Good Standing from S/D ALA for James U. Blacksher
3/18/77		Cert. of Good Standing from S/D ALA for Larry T. Menefee
3/21/77		Mailed Rule 6 letter to all counsel for Plfs./Rule 3 letter to NY attys JS-5 prepared
3/28/77	2	Filed: Summons & USM/285 showing service on Escambia County, Florida by serving Cindy Majewski, authorized agent for Kenneth Kelson, Chairman of Board of County Commissioners on 3/25/77
3/28/77	3	Filed: USM/285 showing service on Board of County Commissioners of Escambia County by serving Cindy Majewski, authorized agent for Kenneth Kelson, Chairman of Board on 3/25/77

3/28/77	4	Filed: USM/285 showing service on Kenneth Kelson, individually, by serving Cindy Majewski, authorized agent for service on Kenneth Kelson, on 3/25/77
3/28/77	5	Filed: USM/285 showing service on Kenneth Kelson, Board of County Commissioners of Escambia County, by serving Cindy Majewski, authorized agent for Kenneth Kelson, on 3/25/77
3/28/77	6	Filed: USM/285 showing service on Marvin Beck, individually, by serving Cindy Majewski authorized agent for service on Marvin Beck, on 3/25/77
3/28/77	7	Filed: USM/285 showing service on Marvin Beck, Board of County Commissioners of Escambia County, by serving Cindy Majewski, authorized agent for service on Marvin Beck, on 3/25/77
3/28/77	8	Filed: USM/285 showing personal service on Joe Oldmixon, individually, on 3/25/77
3/28/77	9	Filed: USM/285 showing personal service on Joe Oldmixon, Supervisor of Elections for Escambia County, on 3/25/77
4/11/77	10	Filed: Motion & Stipulation for Extension of Time for defts to file responsive pleadings
4/11/77	11	Filed: Order of Judge Arnow giving defts to 4/27/77 to file responsive pleadings-copies to all counsel
4/11/77	12	Filed: 285 service form w/summons attached showing service on Charles Dease, Bd. of Co. Comm. by serving sec. Linda Scheuerman on 4/4/77

4/11/77	13	Filed: 285 service form w/summons attached showing service executed on Charles Dease individually by his secretary Linda Scheuermann on 4/4/77
4/11/77	14	Filed: 285 service form showing service on Zearl Lancaster, Bd. of Co. Comm. by executing on his secretary Carol Starr on 4/4/77
4/11/77	15	Filed: 285 service form showing service on Zearl Lancaster, individually by serving his secretary Carol Starr on 4/4/77
4/11/77	16	Filed: 285 service form showing service on Jack Kenney personally on 4/1/77 in capacity as Co. Comm.
4/11/77	17	Filed: 285 service form showing personal service on Jack Kenney, individually on 4/1
4/11/77	18	Filed: 285 service form showing personal service on Lois Suarez as member of School board on 3/31/77
4/11/77	19	Filed: 285 service form showing personal service on Lois Suarez, individually on 3/31/77
4/11/77	20	Filed: 285 service form showing personal service on Peter Gindl, individually on 3/3
4/11/77	21	Filed: 285 service form showing personal service on Peter Gindl, member of school board on 3/31/77
4/11/77	22	Filed: 285 service form showing personal service on Carol Marshall on 3/31/77
4/11/77	23	Filed: 285 service form showing personal service on Carol Marshall, member of school board on 3/31/77

4/11/77	24	Filed: 285 service form showing personal service on Charles Stokes, Supt. of Schools for School Board of Escambia County on 3/31/77
4/11/77	25	Filed: 285 service form showing service on Dr. Floyd Dumas, Asst. Chairman of Board, for School District of Escambia County on 3/31/77
4/11/77	26	285 service form showing personal service on A.P. Bell, member of School Bd. on 3/31/77
4/11/77	27	Filed: 285 service form showing personal service on A.P. Bell, individually on 3/31/77
4/11/77	28	Filed: 285 service form showing personal service on James Bailey, member of School Board on 3/31/77
4/11/77	29	Filed: 285 service form showing personal service on James Bailey, individually on 3/31/77
4/11/77	30	Filed: 285 service form showing service on Richard Leeper, member of School Bd. on 3/31/77
4/11/77	31	Filed: 285 service form showing service on Richard Leeper individually on 3/31/77
4/11/77	32	Filed: 285 service form showing service on Frank Biasco individually on 3/31/77
4/11/77	33	Filed: 285 service form showing service on Frank Biasco, member of School Board on 3/31/77
4/27/77	34	Filed: Answer & Affirmative Defenses of Defendant School Board, et al – Referred to Judge Arnow

4/27/77	35	Filed Answer & Affirmative Defenses of Escambia County, et al – Referred to Judge Arnow – PPT Requested
4/28/77	36	Filed: Notice of PPT set for 5/18/77 at 10:30 AM-copies to all counsel
5/18/77	37	Filed: Plaintiffs' 1st interrogs. to deft School Bd. chk
5/18/77	38	Filed Plaintiffs' 1st request for prod. of documents by deft Oldmixon. chk
5/18/77	39	Filed: Plaintiffs' 1st interrogs. to deft Oldmixon. chk
5/18/77		L.C. Notes of Hearings held from 10/30 - 11/30 – Order to be entered – Discovery set for 8/18/77. Cases 77-0432 and 77-0433 are consolidated for discovery purposes. Conditionally certified as class action. Briefs due in 10 days on disputed areas.
5/18/77	40	Filed First Interrogatories propounded by Deft School Board, et al
5/18/77	41	Filed: Order that cases consolidated for disc. only w/disc to end 8/18/77; that original of all depos filed on this case w/copy filed in 77-0433; conditionally certified class action w/members of class being all black citizens of Escambia County & City of Pensacola; memos due 5/30 on issue if State, Governor & Dept. of State are indispensable parties; whether case should proceed against members of County Comm. School Board & City Council in individual capacities – copies to all counsel of record
5/18/77		Supplemental class action allegation prepared

5/20/77	42	Filed: Defts' Escambia Co., County Comm. & individual members of same, Elect. supervisor & as individuals 1st interrogs to plfs.
5/20/77	43	Filed: Plfs' 1st request for production of documents by School Bd. & individual members thereof
5/27/77	44	Filed: Plfs' memo brief concerning questions raised at 1st pt conference – REFERRED
5/27/77	45	Filed: Defts' Memo of law in support of county commissioners & supervisor of election affirmative defenses – REFERRED
5/31/77	46	Filed: Deft. School Board's memo in support of affirmative defenses – REFERRED
6/3/77	47	Filed: Plfs' 1st request for production by County Commissioners
6/3/77	48	Filed: Plfs' 1st interrogs to County Commissioners
6/17/77	49	Filed Deft Oldmixon's reply to Plfs' 1st request for Production of Docs.
6/20/77	50	Filed: Deft. School Board's ans & obj. to plfs' 1st interrogs & memo in support of same
6/21/77	51	Filed: Deft Oldmixon's Answers, Objections & Memo to Plfs' 1st Interrogs to Deft.
6/21/77	52	Filed: Response of Deft School Board, et al to Plfs' 1st Request for Production & Brief in support of objections to production

6/24/77	53	Filed: Plfs' 1st Interrogs to Deft City of Pensacola
6/24/77	54	Filed: Plfs' 1st Request for Production of Documents by Deft. City of Pensacola
6/28/77		Received: Proposed Consent Discovery Order – REFERRED TO JUDGE ARNOW
7/1/77	55	Filed: Answers & Objections of Plfs to Defts' first interrogatories
7/8/77	56	Filed: Defendant County Commissioners' response to plfs' 1st request for prod.
7/15/77	57	Filed: Deft's notice of taking depositions of Henry McMillan, Robert Crane, Charles Scott, Wm. Maxwell, Charles Stokes, Elmer Jenkins, Woodrow Cushon, Samuel Horton, Henry Burrell & Bradley Seabrook on 7/20/77 & 7/21/77
7/20/77	58	Filed: Consent Discovery Order (Arnow, CDJ) that deft Oldmixon may answer plfs' 1st Interogs. to deft. Oldmixon when necessary by referring to documents & said documents need not be filed in Clerk's office-copies to all counsel
7/22/77	59	Filed: Second interrogatories propounded by Deft School Board, et al
7/26/77	60	Filed: Plfs; notice of taking Joseph Mooney's depo on 8/3/77 @ 9/30 AM
7/28/77	61	Filed: 2nd Interrogatories propounded by Defts County & Supvsr of Elections

8/2/77	62	Filed: Joint motion to extend discovery w/proposed order – REFERRED to Judge Arnow
8/4/77	63	Filed: Copy of letter from Atty. Blacksher to John Fleming that depo of Mr. Moone has been re-set for 8/10/77 @ 9:30 AM
8/4/77	64	Filed: Order granting motion for exten. of disc. – time extended to 11/19/77 & same not to be further extended unless motion file suff. in advance of 11/19/77
8/5/77	65	Filed: Copy of letter to all counsel from judge re: adding add. parties
8/9/77	66	Filed: ORDER (ARNOW, CJ) The new local rule 17, entitled Class Actions, adopted by this court, is now adopted as a rule applying to this case during the period from the date of this order until 11/1/77 when such local rule becomes effective & thereafter covers the conduct of this & all other class action suits – Copies to all counsel
8/24/77	67	Filed: Deposition of Woodrow Cushon taken on 7/21/77
8/24/77	68	Filed: Deposition of Hollice T. Williams taken on 8/2/77
8/29/77	69	Filed: Deposition of Samuel A. Horton taken on 7/27/77
8/29/77	70	Filed: Deposition of Henry N. Burrell taken on 7/27/77
8/27/77	71	Filed Deposition of Charles L. Scott taken on 7/27/77
9/7/77	72	Filed: Depo of Robert P. Crane taken 7/25/77

9/9/77	73	Filed: Deft County Commissioners' Answers, objections & memo to plfs' first interrogatories to deft county commissioners
9/9/77	74	Filed: Depo of William F. Maxwell taken 7/25/77
9/12/77	75	Filed: Deft County Commissioners' Answers, objections & memo to plfs' first interrogatories w/Commissioner Lancaster's signature
9/19/77	76	Filed: Depo of Henry McMillan
9/19/77	77	Filed: Depo of Bradley M. Seabrook
9/22/77	78	Filed: Deposition of Clifford Stokes
9/29/77	79	Filed: Deposition of Joseph K. Mooney
10/5/77	81	Filed: Deposition of Frank A. Faison
10/5/77	81	Filed: Notice of Deposition of Peter R. Gindl on 10/25/77
10/5/77	82	Filed: Notice of Deposition of Kenneth Kelson on 10/24/77
10/12/77	83	Filed: Plfs' answer and obj. to deft. School Board's 2nd interrogs
10/12/77	84	Filed: Plfs' ans. & obj. to deft. County Commissioner's and Super. of Elections' 2nd interrogs
10/12/77	85	Filed: Depo of Elmer Jenkins taken 7/21/77
10/19/77	86	Filed: Notice of filing verbatim transcript of statements made by & to Deft Board of County Commissioners & atty during public hearing held 8/31/77
11/10/77	87	Filed: Deposition of Henry T. McMillan & Robert Paul Crane taken on 7/20/77

11/18/77	88	Filed: Deft, Escambia County – Motion to extend time for discovery – REFERRED as EMERGENCY
12/1/77	89	Filed: Notice of Continuation of taking of deposition of Henry T. McMillan.
12/2/77	90	Filed: Clerk's Notice – Deft Escambia County Motion to extend discovery – GRANTED copies to all counsel – Discovery ext. to 1/6/78
12/12/77	91	Filed: Continuation of deposition of Henry McMillan on 12/6/77
12/15/77	92	Filed: Transcript of a portion of meeting of Bd of Co. Commissioners held 12/8/77.
12/19/77	93	Filed: Transcript of School Board meeting of 10/13/77
1/10/78	94	Filed: Plfs' Motion & brief for order authorizing certain communications with class members –& Hearing set, handed to L.C.
1/10/78	95	Filed: ORDER extending discovery to 3/10/78 – Copies to all counsel
1/16/78	96	Filed: Ltr from Atty Charles S. Rhyne re: change of address
1/20/78	97	Filed: Deft. County Comm. response to motion for order authorizing communications w/class members
1/23/78	98	Filed: Defts; School District, School Board, Gindl, Marshall, Leeper, Suarez, Bell, Biasco & Bailey's reply memo in oppo to motion for order authorizing communications with class

1/25/78	99	Filed: Defts County Commissioners' supplemental answer to plf's interrogs
1/30/78	100	Filed: Ltr from Louis F. Ray, Jr. to Judge Arnow re: School Board Transcript
2/1/78	101	Filed: Deft. County's notice of taking depos of Drs. Cottrell, Curry, McGovern and Shofner on 2/27 & 28 w/copy of letter to Atty Blacksher attached
2/8/78	102	Filed: Notice of hearing on motion & other matters pertaining to communications of class members set 2/22/78 at 3:00 PM – copies to all counsel
2/14/78	103	Filed: Plfs' motion and memo for order authorizing Dr. Chas Cotrell to interview members of class
2/14/78	104	Filed: County's respns to plfs' informal disc. request for 1977 EEO-4 reports
2/23/78	105	Filed: ORDER (ARNOW, CJ) Deft, Dr. Frank Biasco w/i 15 days (3/10/78) will serve memo of law respecting motion & plfs have 15 days after service to serve response – copies to all counsel
2/23/78	106	Filed: ORDER (ARNOW, CJ) re communications w/class members; counsel shall maintain a list of all class members they communicate with & shall periodically file in this court such lists, under seal, to be held *in camera*, w/such lists to be filed at the end of each month, commencing w/3/78. Names on such list will not be divulged except pursuant to order of competent court – copies to all counsel

2/23/78	107	Filed: Clerk's Notice – Plfs' Motion for order authorizing Dr. Cotrell to conduct interviews w/members of class – DENIED as moot, in view of order entered this date – copies to all counsel
2/23/78	108	Filed: Deft County Commissioners' supplemental answers to plfs' interrogs
2/23/78	109	Filed: Ltr from Atty Ray to Judge Arnow dtd 1/31/78 re: Dr. Biasco
3/1/78	110	Filed: Plfs' Motion for extension of time for conducting discovery – REFERRED
3/6/78	111	Filed: Letter to Judge from Atty. Blacksher w/proposed form letter seeking funds from class members attached for approval by court – REFERRED
3/7/78	112	Filed: Memo of law in support of pet. of deft Dr. Biaso for approval of proposed public statement
3/10/78	113	Filed: Clerk's Notice – Proposed form letter from plfs approved w/correction – copies to all counsel w/copy of approved letter attached
3/13/78	114	Filed: Clerk"s Notice – Motion to ext. disc. GRANTED – Disc. ends 3/20/78 – copies to all counsel
3/13/78		Rule 3C letter to all counsel
3/21/78	115	Filed: Order setting PT Conf – set 4/21/78 @ 9 AM w/papers due 4/14 – copies to all counsel of record
3/24/78	116	Filed: Order modifying paragraph (B) of order setting PT Conf so that parties meet by 4/10 rather than by 4/3 – copies to counsel of record

3/30/78	117	Filed: ORDER approving Dr. Biasco statement permissable under Local Rule 17(B) copies to all counsel
4/3/78	118	Filed: List of class members contacted by plfs' counsel – FILED SEALED AS PER ORDER OF COURT
4/1/78	119	Filed: Defts' MSJ & memo in support of same
4/12/78	120	Filed: Amended PT Order – PT set 5/31/78; PT Papers due 5/15/78; trial tent. set 7/5-7/78 & 7/17-21/78 – copies to all counsel
4/13/78	121	Filed: 2nd amend. order for PT – set 5/4/78 @ 10 AM w/papers due 4/26 & trial set 5/15/78 – copies all counsel
4/25/77	122	Filed: Notice of appearance of add. counsel for plfs – Rule 5 letter written
4/25/77	123	Filed: County's motion for ext. to file PT papers from 4/26 to 5/1 – REFERRED
4/25/77	124	Filed: County's memo in support of motion to extend time to file PT papers
4/25/77	125	Filed: Deposition of Kenneth Shofner taken on 3/2/78
4/25/77	126	Filed: Deposition of James McGovern taken on 3/2/78
4/26/78	127	Filed: PT Stipulation
4/27/78	128	Filed: Cy ltr from Judge Arnow to Counsel re: compliance W/PT Order
5/1/78	129	Filed: Plfs motion to allow deposing of defts' expert witnesses – REFERRED

5/1/78	130	Filed: Plfs' notice of taking depos of Dr. Dauer, Dr. Morris, Dr. Horton 5/8/78
5/1/78	131	Filed Plfs' PT proposed findings of fact & conclusion of law – REFERRED
5/1/78	132	Filed: Plfs' PT brief & oppo to defts' MSJs – REFERRED
5/1/78	133	Filed: Deft' Trial Brief – REFERRED
5/1/78	134	Filed: Deft School Board 2nd amendment to deft's potential witness list
5/1/78	135	Filed: Deft School Board 1st amendment to potential witness list
5/1/78	136	Filed: Deft County Commissioners & Supervisor of Elections exhibit list
5/1/78	137	Filed: Defts' Proposed findings of facts & conclusions of law – REFERRED
5/4/78	138	Filed: Cert. of Good Standing from ND/Ala for W.E. Still, Jr.
5/8/78	139	Filed: Notes of PT Conf; plfs prior to trial to file stip re: para. F5 of the PT stip; memo re: obj. to exhibits due by 5/12 & PT order due 5/12
5/8/78	140	Filed: Copy of letter from Judge to all counsel re: conduct of trial.
5/8/78	141	Filed: Third Amendment to Deft School Bd's potentional witness list.
5/11/78	142	Filed: First Amendment to Deft County Commissioners and Supervisor of Elections' potential witness list.
5/12/78	143	Filed: Deft memo in oppo to admissibility of newspaper articles – REFERRED

5/12/78	144	Filed: Amendment to Plfs' Witness List – REFERRED by handing to L.C.
5/12/78	145	Filed: File Memo of authorities concerning admission of newspaper articles – REFERRED by handing to L.C.
5/12/78	146	Filed: PRE-TRIAL ORDER – copies to all counsel
5/12/78	147	Filed: Deft Cty Cmms & Svsr Elect. Memo in opp. to admissibility of exhibits of Plfs – REFERRED to handing to L.C.
5/12/78	148	Filed: Stipulation pursuant to PT Order filed 5/12/78 – REFERRED by handing to L.C
5/15/78	149	Filed: Deposition of Doctor Manning Dauer taken 5/8/78
5/15/78	150	Filed: Deposition of Doctor Michael Horton taken 5/8/78
5/15/78	151	Filed: Deposition of Honorable M.C. Blanchard taken 5/8/78
5/17/78	152	Filed: Deposition of Peter R. Gindl, Sr. taken 8/2/77
5/18/78	153	Filed: Deposition of Dr. Charles Cottrell
5/23/78	154	Filed: Memo of law of deft. School Board
5/15/78		Proceeding before Judge Arnow for non-jury trial – to continue 5/16
5/16/78		Cont. of N-J trial - to cont.
5/17/78		Cont. of N-J trial – to cont.
5/18/78		Cont. of N-J trial – to cont.

5/21/78		Cont. of N-J trial – to cont.
5/22/78		Cont. of N-J trial – to cont.
5/23/78		Cont. of N-J trial – to cont.
5/24/78		Cont. of N-J trial – to cont.
5/25/78		Cont. of N-J trial – to cont – both sides rest @ 11:40 AM – parties to file briefs in 10 days – 5/5/78
5/30/78	155	Filed: Transcript of trial testimony of Dr. Charles L. Cotrell
6/1/78	156	Filed: Transcript of trial testimony of Dr. Manning J. Dauer
6/5/78	157	Filed: Trial Testimony of William H. Marshall
6/5/78	158	Filed: Defts County & School Board's post trial memo w/copy of same – REFERRED
6/6/78	159	Filed: Plfs' post-trial proposed findings of fact & conclusions of law – REFERRED
6/6/78	160	Filed: Copy ltr from Atty Blacksher to defts counsel re: Plfs' Post trial brief
6/12/78	161	Filed: Defts' motion to file post-trial memo response to plfs' post-trial brief w/memo in support attached – REFERRED
7/3/78	162	Filed: Sealed envelope containing those class members with whom attorneys for the plaintiffs in this cause and in 77-0433 discussed these cases during the period through 6/30/78.

7/7/78	163	Filed: Plfs' sealed list of class members as per order
7/7/78	164	Filed: Defts' application for stay and injunction pending appeal
7/7/78	165	Filed: Defts' memo in support of application for stay & injunction & proposed order – REFERRED
7/10/78	166	Filed: School Board's consent to entry of order granting application for stay and injunction pend. appeal
7/10/78	167	Filed: Memorandum decision – copies del. & mailed to all counsel of record
7/10/78	168	Filed: Judgment in favor of plfs and against defts & taxing costs against defts; that parties to submit proposals for dilution remedy in 45 days; that remedial systems approved and adopted not to be effective for primary & general elections in 1978 but will be effective in 1980; retaining jurisdiction of matter & that an immediate appeal may materially advance ultimate decision of litigation – copies either del. or mailed to all counsel; recorded in COB #21, Pgs 14 & 15
7/10/78		JS-6 prepared
7/11/78	169	Filed: Order that defts' application for stay of elections pend. final determination DENIED – copies to all counsel & recorded in COB #21, Pgs. 17-19
7/11/78	170	Filed: Order that County Commissioners motion to substitute #34 exhibit with copy of same – GRANTED – copies to all counsel

7/14/78	171	Filed: Cy ltr to John Suda re: transcript of case
7/18/78	172	Filed: Plfs' motion to alter or amend judgment
7/18/78	173	Filed: Brief in support of plfs' motion to alter or amend judgment
7/31/78	174	Filed: Opposition to plaintiff's motion to alter or amend judgment. Referred.
8/8/78	175	Filed: ORDER – Plfs motion to amend or alter judgment is denied w/o prejudice – copies to all counsel
8/9/78	176	Filed: Notice of Appeal by Deft Carol Ann Marshall
8/9/78	177	Filed: Notice of Appeal by Defts Escambia County, et al.
8/24/78	178	Filed: County's proposed election plan
8/24/78	178	Filed: School Board's proposed election plan
8/24/78	179	Filed: County's amendment to election plan
8/24/78	180	Filed: School Board's proposed election plan
8/25/78	181	Filed: Plaintiffs' submission of districting plan for the County Commission and School Board. Referred.
8/28/78	182	Filed: Cy ltr from Atty Fleming to Counsel re: transcript
8/29/78	183	Filed: Cy ltr from Judge Arnow to All Counsel re: Hearing (status) 9/25/78 at 9:00 AM w/ltr from Grady H. Albritton dtd 8/29/78

9/7/78	184	Filed: Plfs' amendment of districting plan for the county commission & school board – REFERRED
9/13/78	185	Filed: Request for extension of time for transmission of record on appeal – REFERRED
9/14/78		Request for ext. of time for trans. of record-on-appeal stamped GRANTED – copies to all counsel, court reporter & cert copy to USCA-5th Cir.
9/15/78	186	Filed: Defts' memo in support of submitted electoral plans – REFERRED
9/19/78	187	Filed: Plfs' memo concerning proposed remedies – REFERRED
9/22/78	188	Filed: Notice of adoption of ordinance amending election plan. Referred.
10/5/78	189	Filed: Memorandum (WEA) w/trans. ltr to all counsel – memos due re: charter commission & School Board Governing Authority w/plfs responding w/i one wk after (10/10/78) – hearing set 11/21/78 at 2:00 PM (evidentiary)
10/10/78	190	Filed: Deft School Board's Amendment to deft's memo in support of submitted electoral plans – REFERRED
10/17/78	191	Filed: Plfs' reply to deft School Board's Amended memorandum – REFERRED
10/18/78	192	Filed: Cy ltr from Atty Blacksher to Judge Arnow re: Charter Commission process
10/18/78	193	Filed: Cy ltr from Atty Fleming to Judge Arnow re: Charter Commission
10/19/78		Filed: Transcript of Non-Jury Trial (9 volumes)

11/7/78		Record-on-Appeal mailed to USCA-5th Circuit – copies of dockets w/trans. ltr to all counsel – cc: Judge Arnow & John Suda – Exhibits to be mailed by Appellants
11/7/78	194	Filed: Cy ltr from Atty Lott to Clerk, USCA-5th Circ. re: motion to expedite appeal
11/7/78	195	Filed: Cy ltr from Atty Fleming re: docketing fee
11/29/78	196	Filed: Copy ltr from Judge Arnow to Mr. Oldmixon
12/5/78	197	Filed: Notice of substitution of parties – substituting John E. Frankel, Jr. for Jack Kenney as County Commissioner
2/5/79		Judge's Memo to refer back in ten days (2/15/79)
2/13/79	198	Filed: Deft County's Offer of Judgment for legal services
2/15/79	199	Filed: Defts' memorandum regarding preclearance remedy
2/20/79	200	Filed: CONSENT ORDER w/respect of plfs' attys' fees to be paid by deft School Bd Judgment entered in favor of plfs & against deft School Board in the amount of $48,000.00 in full satis. of plfs' claims for attys' fees to 12/31/78 – Pending resolution of appeal the above amount shall be placed in a certificate of deposit or some other interest-bearing account w/periodic int. realized to be made payable to plfs' attys', etc. – This judgment shall have no effect upon & shall be entered w/o prejudice to plfs' claims for

attys' fees against Deft School Board & members w/respect to work performed after 12/31/78 & against all other defts in this & the companion 77-0433 – copies to all counsel

2/20/79 201 Filed: Memorandum decision concern- regarding preclearance remedy

2/27/79 202 Filed: School Board's suggestion of parties – REFERRED

2/27/79 203 Filed: Memorandum decision concerning remedial plan – copies to counsel

2/27/79 204 Filed: Order in accordance w/memo decision – re-apportioned to 5 single-member districts as prescribed in plan filed 8/24/78 as attached w/map; at next primary & general election in 1980, board to be reduced from 7 to 5 members; those members elected in 1980 from districts 1, 2 & 3 to serve 2 year terms and those elected from 4 & 5 shall serve 4 years and thereafter, all members to be elected for 4 year terms; after each federal decennial census, districts to be re-apportioned; enjoining County School district, school board, individual members, supervisor of elections, from failing to redistrict as set out, holding elections as redistricted; retaining jurisdiction for 5 years – copies to counsel of record – recorded in COB #21, Pg 16-19

3/5/79 205 Filed: Consent ORDER W/respect to plfs' attys' fees to be paid by Deft Escambia County – copies to all counsel

3/12/79 206 Filed: AMENDED CONSENT ORDER

		w/respect of Plfs' attys' fees to be paid by Deft Escambia County – Judgment entered for Plfs & against Deft Escambia County in amount of $49,729.00 in full satisfaction of attys fees & costs up to & including 12/31/78, plus simple int. at 8% per annum beginning 4/1/79, entered on consent of parties & entered w/o prejudice to plfs' claims for fees after 12/31/78 in this & 77-0433, provided no claim for attys fees or costs shall be allowed against Deft Joe Oldmixon – copies to all counsel
3/29/79	207	Filed: Deft School Board Member Sam Forester's Notice of Appeal – cert. copy to USCA 5th Circuit w/cert. copy docket sheets cc: all counsel & Deft SB Member
4/20/79	208	Filed: Cy ltr from Court Reporter to Mr. Forester re: Transcript
4/27/79	209	Filed: Motion to withdraw appeal – REFERRED
		Court Reporter Notes: Box 43 Col. 2, 3, 4, 5, 6
5/15/79		Deft Sam Forester's Motion to withdraw appeal stamped "GRANTED – The court being advised this appeal has not yet been docketed." – copies of motion w/endorsement to all counsel & School Board Member Sam Forester & USCA-5 Cir.
7/5/79	210	Filed: Notice of proposed county charter
3/17/79	211	Filed: Plfs motion and memo for tentative approval of proposed charter reapportion plan

3/17/79	212	Filed: Clerk's notice of hearing on motion for tentative approval of proposed charter reapportionment plan – set 9/8/79 @ 9 AM – copies to counsel of record
9/21/79		Hearing held from 2 – 3:15 PM order to be entered on county plan and charter plan
9/24/79	213	Filed: Memo decision – giving tentative approval as suggested by the parties, to the reapportionment plan contained in the proposed County Charter to be submitted to the referendum election 11/6/79; such approval is subject to the condition that the single member district boundaries subsequently drawn by reapportionment commission, if charter is approved, to be submitted to the court for review and approval as adequate remedy for the present racially discriminatory election system – copies to counsel of record
11/9/79		Letter from Judge to all counsel setting hearing on 11/26/79 re: voting plan
11/29/79	214	Filed: Escambia County's memo in support of preserving incumbency pending remedial redistricting – handed to L.C.
1/29/79	215	Filed: Notice of substitution of parties – Woolard for Deese-County Commission
11/29/79	216	Filed: Plfs' memo re: preserving incumbency – handed to L.C.
12/3/79	217	Filed: Memo decision on County Commissioners reapportionment – copies to counsel

12/3/79	218	Filed: Order (WEA) on memo decision that County Commissioners to be reapportioned to 5 single-member districts w/boundaries to conform to those adopted in 2/27/79 order w/description appended to order; at next primary & general elections in 1980 single-member districts will be elected but jurisdiction is retained to alter date of elections on motion; to preserve staggered terms, commissioners from Dist. 1, 2 & 3 shall serve 4-year terms & those elected from Dist. 4 & 5 to serve 2 yrs initially, but 4 yrs thereafter; after publication of decennial census, districts shall be reapportioned to comply w/one-person, one-vote requirements; that County Commissioners, individually & in official capacities & Supervisor of Elections, their successors, agents, etc. are enjoined from failing to redistrict & reapportion & to hold elections as redistricted; retaining jurisdiction for 5 yrs. unless changed for further orders as necessary copies to counsel, recorded in COB #21, Pgs 239 to 243
1/3/80	219	Filed: Escambia County's Notice of Appeal (Rec'd w/o filing & docket fees 1/2/80)
1/3/80		Trans 1th to USCA w/cert. copy notice of appeal & docket sheets – cc: all counsel of record
		Court Reporter Notes: Box 49 Col. V-H. 1-26-79, 9-25-78
1/18/80		Record-on-appeal mailed to USCA cc: all counsel of record

1/23/80	220	Filed: Motion of Deft Escambia County for stay of 12/3/79 Order of Elections w/memo
2/6/80	221	Filed: Notice of hearing on motion for stay set 2/15/80 at 10: AM – copies to all counsel
2/7/80	222	Filed: Plfs' memo opposing defts' application for stay of elections
2/15/80	223	Filed: ORDER (WEA) denying deft County's Motion for stay of elections – copies to all counsel
2/26/80	224	Filed: Notice of Appeal by Deft County
2/26/80		Record on appeal consisting of Documents #220 - 224 mailed to USCA – cc: all counsel of record
3/23/81	225	County's stip. that Patricia D. Wheeler be substituted as counsel for the county in place of Richard I. Lott
3/23/81	226	County's entry of appearance of Patricia D. Wheeler as counsel for Escambia County
4/13/81	227	ORDER (USCA) Denying plfs' motion for restoration of USDC injunctions
8/17/81	228	MOTION for the payment of attorney's fees and costs with respect to issues concerning school board
8/31/81	229	Consent Order (WEA) re: plfs' attys' fees to be paid by shool board – copies to counsel of record
11/16/81	230	JUDGMENT issued as a mandate affirming District Court Judgment – REFERRED

12/22/81	231	Plfs' motion and brief for award of attys' fees and costs w/affidavits
12/28/81	232	Amended motion for award of attys' fees and costs w/exhibit attached
1/5/82	233	Deft Marshall's response to plfs' motion and brief for award of attys' fees and costs
2/5/82	234	Notice of hearing set for 2/25/82 at 11:00 am-copy to all counsel
2/25/82	235	ORDER (WEA) Setting case for evidentiary hearing 3/29/82 at 9: AM – 1 day – copies to all counsel
3/3/82	236	STIPULATION of w/drawal of counsel
3/3/82	237	APPEARANCE of Paula G. Drummond as atty for Escambia County
3/8/82	238	MOTION for production of documents under Rule 34 by Marshall
3/8/82	239	MOTION to shorten time to respond to motion for production of documents – REFERRED
3/9/82	240	AMENDMENT to Deft Marshall's response to plfs' motion & brief for award of attys' fees & costs & MOTION to deny same & hearing thereon
3/9/82	241	NOTICE of deposition of Carol Ann Marshall on 3/19/82
3/10/81	242	ORDER (WEA) GRANTING deft Carol Ann Marshall's motion to shorten time from 30 to 14 days for plfs to respond to deft's motion for production of documents. – copy to all counsel

3/22/82	243	PLFS' RESPONSE to deft Marshall's motion for production of documents – REFERRED
3/23/82	244	Deft. Marshall's motion for hearing & decisions prior to evid. hearing set 3/29/82 & for reasonable delay of evid. hearing on attys' work & expense – REFERRED
3/25/82	245	Plfs' letter-memo In support of motion for atty's fees & costs awarded jointly & severally – REFERRED
3/25/82	246	Plfs' letter-memo in oppo to deft. Marshall's motion of 3/23/82 – REFERRED
3/25/82	247	Plfs' motion to have County held jointly & severally liable for attys fees & cost
3/26/82	248	DEPOSITION of Carol Ann Marshall taken 3/19/82
5/14/82	249	JOINT MOTION to approve consent judgment w/proposed judgment – REFERRED
5/24/82	250	Consent Judgment – plfs motion for attys fees & costs against Carol Ann Marshall is settled & dismissed; plfs claim for attys fees & costs against Escambia County dismissed w/out prejudice; Carol Ann Marshall to pay plf $8,000 for a claims for fees & costs; all other motions pend. with regard to fees & costs withdrawn – copies to counsel of record
6/7/82	251	Deft. School Bd's motion for preclearance of school board member residence areas & memo in support

6/17/82	252	Plfs obj. to preclearance – REFERRED
6/17/82	253	Plfs letter-memo in support of objections to preclearance
7/1/82	254	ORDER (WEA) conditionally approving pre-clearance of School Board Election District copies to counsel
7/6/82	255	Deft. School Bd's cert copy of RESOLUTION revising districts – REFERRED Wea
7/6/82	256	Civil subpoenas showing svc on Jim C. Bailey on 7/1/82

Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-3507

HENRY T. McMILLAN, ET AL.,
Plaintiffs-Appellees,

versus

ESCAMBIA COUNTY, FLORIDA, ET AL.,
Defendants-Appellants.

* * * * *

ELMER JENKINS, ET AL.,

versus

CITY OF PENSACOLA, ET AL.,
(Consolidated with 79-1633 & 80-5011. Defendants-Appellants.

FILED 8/9/78
Judge Winston E. Arnow
Docket Number CA 77-0432 & CA 77-0433
(Consolidated in D.C.)

APPEARANCE DATE	NR	ATTORNEYS FOR APPELLANT
		FOR ESCAMBIA COUNTY:
12/6/78		Richard Y. Lott, County Att., 23 West Government Street, Pensacola, Florida 32501
12/6/78		John W. Flemming -do- (904) 432-8374
4/10/81		Patricia D. Wheeler -do- (904) 436-5450 (out of case)

3/1/82		Paula G. Drummond -do- FOR SCHOOL BOARD RAY, PATTERSON & KIEVIT, 226 Palafox Street, Pensacola, Florida 32501
		FOR ALL DEFENDANTS:
12/6/78		Charles S. Rhyne, 1000 Connecticut Ave., N.W., Suite 800, Washington, D.C. 20036.
12/6/78		William S. Rhyne -do-
12/6/78		Donald A. Carr (out of the case)
		For CITY OF PENSACOLA:
12/6/78	4	Don J. Canton, City Att., Pensacola, FL (904) 436-4320
		ATTORNEYS FOR APPELLEES
3/26/79		J. U. Blacksher, Mobile, AL 36601 (205) 433-2000
3/26/79		Larry Menefee -do-
		CRAWFORD, BLACKSHER, FIGURES & BROWN, 1407 Davis Ave., Mobile, Al. 36603
12/7/78		J. U. Blacksher -do- (205) 432-1681
1-10-29		Kent Springs, 324 West College Ave., Tallahasee, Florida 32301 (904) 224-87-01
		Jack Greenberg, 10 Columbus Circle, Suite 2030, New York, New York 10010 (212-586-8397)
12-7-78		Eric Schnapper, -do- Edward Still, Suite 400, Commerce Center, 2027 1st Ave., N., B'hm, AL 35203 (205-322-6631)
12/8/28		Refer Panel to City of Mobile v. Bolden in U.S. Supreme Court #77-1844 - 5th Circuit #12

7/31/79	Cons. w/79-1633 after this was screened xxxxxxxxxx 79-1633 was classed IV automatically, xxxx
7/6/83	Call Betty Killan xxxxxxxxxxxxxxxxxx rehearing ruled (904) 433-0004.
8/23/82	Craig Pittman – 800-342-2263 Pensacola Journal, also call Pittman when rehearing is ruled on.

1. Record, Exhibits and Brief Information

11/14/78	Record on Appeal
11/14/78	Exhibits
12/26/78	Brief for Appellants (City of Pensacola, et al.)
12/26/78	Brief for Appellants (County of Escambia, et al.)
3/2/79	Brief for Appellees
3/19/79	Reply Brief for Appellants (City of Pensacola, et al.)
6/16/80	Supp. Brief for Appellants (J)
5/12/80	Supp. Brief for Appellees (J)
7/23/82	Supp. Brief for Appellees (Ed to Plt. former 5th Cir. Judges
7/23/82	Supp. Brief for Appellees (E'd to Plt. former 5th Cir. Judges
12/26/78	Record Excerpts
3-19-79	Reply Br. for Appellants (County of Escambia, et al) 5-9

4. Extension Flg. Motion for:

1-26-79	Appelle's Brief Ext. to 2-25-79

5. Calendar Information

2-14-80 Case assigned for 3-26-80 in EB
Hearing Panel: JPC-Peck-PAK

3-26-80 Case Argued ☐ by Appellant ☐ byAppellee

6. Opinion Information

2-19-81 *Opinion Rendered
PAK Aff. in Pt. Rev. in Pt.
*Issd in xxxxx signed
Printed opinion distributed 3-9-81 p. 4317

7. Rehearing Information

3-2-81 Sub. 3/8/81 PAK

4-3-81 Petition for Rehearing (P) (J) ☐ Appellee ☐ Reg. ☐ Suggestion En Banc

10-8-82 xxxxxx for Rehearing (P) on the Rehearing Opinion ☐ Appellant ☐ En Banc

11-04-82 Order Denying Rehearing of 10-08-82

9-24-82 ☐ Opinion also filed in 80-5011

8. Motions

4-9-79 Consolidate Appeals W/79-1633. clerk BNS dated 4-17-79.

2-21-79 Leave to File Brief in Excess Pgs. 70 pages Court GBT filed 2-2-79

5-12-80 Leave to File Supp. Brief RCV 5-12-80

3-2-81 Stay of Mandate (CofP). Response filed by 3-10-81 sub 3/10/81. Granted. Court Clerk, PAK. Dated 3-12-81.

11-16-82 Stayg Mot. (Appellant) Response filed by Appellee's. Dated 11-18-82. Court Clerk, PAK. Dated 11-23-82.

9. Other Docket Entries

12/6/78	Flg. Notice of appellants, Escambia County and members of its Board of County Commissioners for substitution of parties. (SEND TO SCREENING JUDGE).
11/30/79	Flg. Appellants Notice of substitution of parties. (SEND TO PANEL)
12/7/79	Flg. Appellant's Application for Expedited consideration of Merits appeal.
12/10/79	Flg. Appellee's response in support of motion to expedite appeal.
12/18/79	Flg. Appellee's Supp. Authority. (Send to Panel)
12/26/79	Flg. Order GRANTING appellants' motion to expedite the appeal.
2-13-80	Flg. Appellees' supp. authority. (SEND TO PANEL) (also fld. 79-1633)
3-10-80	Flg. Order granting motion for stay of remedial election pendente lite and further ordering that this appeal be consolidated for argument and disposition with Nos. 79-1633 and 80-5011 (JPC, JWP & PAK) (also filed in Nos. 79-1633 and 80-5011) (Cont.'d)

10. Judgment or Mandate Information

10-23-81	Jdgt. as Mdt. Issd. to Clerk (as to Jenkins)
11-12-81	Jdg. as Mdt. to Clerk (as to McMillan & Escambia, School Board
12-10-82	Record on Appeal Retd. to Clerk (29 volume)
12-10-82	Exhibits Retd. to Clerk 4 boxes
11-23-82	Mandate Isd. to Clerk Mandate Stayed to Order (3-12-81)

11. Supreme Court Information No. 80-1946

5-28-81 Notice of Flg. of Cert. Pet. on 5-19-81

9-17-81 Notice of dismissal of petition f/certiorari in SC 9/11/81.

12-6-82 Notice of Mot. for Stay - Denied 12/2/82

2-15-83 Notice of fld. An Appeal on 2/2/83

9. Other Docket Entries (Con't)

4-29-80 Flg. Appellants, City of Pensacola & Escambia, et al., supp. authority, (CE) (Also filed Nos. 79-1633 and 80-5011).

5/21/80 Flg. Appellees' letter dt. 5/20/80 replying to ct.'s letter of 5/16/80 regarding flg. of an additional brief. (also fld. in Nos. 78-3507 & 79-1633) (C.E.).

10/28/80 Flg. Appellees' letter dt. 10/21/80 calling Ct.'s attn. to attached brief filed by U.S. in case No. 78-3241. (CE)

11-12-80 Flg. appellants' letter of 11-5-80 as supp. authority. (CE)

11-24-80 Flg. appellants' Supp. Authority. (C.E.) regarding each local government sub. 3/10/81 PAK). Petition for rehearing and en banc. (sub 3/11/81 PAK)

3-12-81 Flg. Order GRANTING issuance of separate mandates for each of the governmental defendants in 78-3507. (SEE ORDER IN FILE) Further ORDERING Stay of mandate pending the filing and disposition of a jurisdictional stmt on appeal to the S.C. (PAL)

4-2-81 Flg. Appellees' motion for restoration of injunctions.

4-7-81 Flg. City of Pensacola opposition to Plaintiffs' motion for restoration of injunction. (sub 4/7/81 PAK)

4-10-81 Flg. motion of Appellees' for issuance of mandate in 78-3507 to the school board. Sub PAK 4/27/81

4-27-81 Flg. motion of Appellees' for issuance of mandate in 78-3507 as to the school board. Sub PAK 4/27/81

4/28/81 Flg. Order DENYING appellees' motion for issuance of the mandate as to the school board. (PAK)

5-11-81 Flg. Appellee, City of Pensacola Notice of Appeal to the U.S. Supreme Court. LTR xxxxx

9-10-81 Flg. Joint motion for issuance of the mandate in 78-3507 Sub PAK

9/29/81 Flg. order DENYING Joint Motion for issuance of the mandate in 78-5307.

10/1/81 Flg. motion of Phillip M. Waltrip to Intervene. (Sub. PAK 10/6/81)

10-5-81 Flg. joint motion for issuance of mandate in 78-3507 and 79-1633

10-9-81 Flg. Appellees MEMORANDUM In Support of Motion f/issuance of the mandate & Supporting Motion f/Immediate Remand.

11-3-81 Flg. JOINT MOTION F/Issuance of Mandate as to the School Board w/MEMORANDUM. Sub. PAK 11/8/81.

11-12-81 Flg. Order GRANTING joint motion for issuance of the mandate as to the Escambia County School Board. (PAK)

11-12-81	Flg. Order DENYING motion of Phillip M. Waltrip to intervene (COLEMAN, PAK, PECK)
12-14-81	Flg. Phillip M. Waltrip's REQUEST f/Clarification. Sub xxxx 12/18/81
3-1-82	Flg. appellant's STIPULATION f/Substitution of Counsel.
3-1-82	Flg. appellant's LETTER re Elections-CE.
3/8/82	Flg. order DENYING Waltrip's request for clarification of the Court's order of 12/14/81. (PAK)
7/27/82	Flg. appellee's MOTION To Dissolve Stay of Elections. Sub JCG
10-29-82	Flg. appellees MOTION To Dissolve Stay Of Elections.
11-8-82	Flg. appellants' OPPOSITION To The Appellees' Motion To Dissolve Stay of Elections.
11-04-82	Flg. order denying motion of State Association of County Commissioners for leave to file amicus curiae brief in support for rehearing en banc. (PAK).
11/12/82	Flg. appellee's letter in response to appellant's opposition to appellees' motion to dissolve stay of elections. (Sub. supp. 11/15 Unit A&B)
11/12/82	Flg. motion of Sumter County for leave to file amicus curiae brief in support for rehearing en banc.
11/12/82	Flg. motion of Hendry County Board of Commissioners for leave to file brief as amicus curiae in support of for rehearing en banc.
11/16/82	Flg. motion of Seminole County, Fl for leave to file amicus curiae brief in support of for rehearing en banc of appellants.

11/16/82 Flg. motion of appellants for stay of mandate pending to Supreme Court. (Sec. 3. 8) Sub. PAK

11/16/82 Flg. motion of Citrus County for leave to file amicus curiae brief in support of petition for rehearing en banc of appellants.

11/18/82 Flg. response of appellees to appellants motion for stay of mandate. (Sub. PAK 11/18/82)

11/23/82 Flg. order DENYING motion of Sumter County for leave to file amicus curiae in support of the suggestion of en banc. (PAK) (bh)

11/23/82 Flg. order DENYING motion of Hendry County, Fla., for leave to file amicus curiae in support of the suggestion en banc. (PAK) (bh)

11/23/82 Flg. order DENYING motion of Seminole County, FLA for leave to filed amicus curiae in support of the suggestion en banc. (PAK) (bh)

11/23/82 Flg. order DENYING of Citrus County for leave to file amicus curiae in support of suggestion en banc. (PAK) (bh)

11/23/82 Flg. order DENYING motion of Escambia County, et al. for a stay of the mandate pending application for review to the United States Supreme Court. (COLEMAN, PECK, PAK)

11/24/82 Flg. order DENIED AS MOOT the appellees' motion to dissolve stay elections (PAK)

4/20/83 Flg. order of the Supreme Court noting probable jurisdiction.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 80-5011

HENRY T. McMILLAN, ET AL.,
Plaintiffs-Appellees,

versus

ESCAMBIA COUNTY, FLORIDA, ET AL.,
Defendants-Appellants.
(Consolidated with 79-1633 & 78-3507)

Cross Appeal No. 80-5130X

FILED 1/3/80 (Escambia, et al.) 2-26-80 (Escambia, et al.)
Judge Winston E. Arnow
Docket Number PCA 77-0432

Location of Hearing EB
Date of Hearing 3-26-80
Hearing Panel JPC-Peck-PAK

Hon. John W. Peck
Senior Circuit Judge
613 U.S. Courthouse

APPEARANCE DATE	C-O-DE	ATTORNEYS FOR APPELLANT
		FOR ESCAMBIA COUNTY:
1/11/80		Richard Y. Lott, County Att., 23 West Government Street, Pensacola, Florida 32501

4/10/80	Patricia D. Wheeler, County Atty -do-(904) 436-5450
3/4/82	Paula G. Drummond -do-
3/26/80	RHYNE & RHYNE, William S. Rhyne, 1000 Connecticut Ave., N.W., Suite 800, Washington, D.C. 20036 202/466-5420
1/14/80	Charles S. Rhyne -do-

ATTORNEYS FOR APPELLEE

1/14/80	BLACKSHER, MENEFEE & STEIN, P.A., P. O. Box 1051, Mobile, Alabama 35601 (205) 433-2000
1/14/80	KENT SPRIGGS, 324 W. College Ave., Tallahassee, FL 32301 (904) 224-8701 JACK GREENBERG, Suite 2030, 10 Columbus Cir., N.Y., N.Y. 10019
1-16-80	EDWARD STILL, Suite 400, Commerce Center, 2027 First Ave., North, Birmingham, Alabama 35203 205/322-6631-7479
xxxxxx	See 78-3507, 79-163

1. Record, Exhibits and Brief Information

1-21-80	Record on Appeal
3-4-80	Supp. Record
2-15-80	Brief for Appellants
3-18-80	Brief for Appellees
7-23-82	Supp. Brief for Appellants CE'd to All Former Fifth Judges
7-23-82	Supp. Brief for Appellee CE'd to All Former Fifth Judges
2-15-80	Record Excerpts

2. Miscellaneous Filings

1/7/80 (E) Dup. Notice of Appeal and Clerk's Statement of Docket Entries

* * *

5. Calendar Information

3-10-80 Case Assigned for 3-26-80 in EB
Hearing Panel: JPC-Peck-PAKZ

3-26-80 Case Argued ☐ by Appellant ☐ by Appellee

6. Opinion Information

2-19-81 *Opinion Rendered, PAK
*issd. in typewritten form
Printed opinion distributed 3-19-81 p. 4329

7. Rehearing Information

3-3-81 Mot. for Ext. - Ext. to 4-4-81 PAK

4-3-81 Petition for Rehearing (P) (CJ) ☐ Appellee ☐ Reg. ☐ Suggestion En Banc

10-8-82 Suggestion for Rehearing (P) On the Rehearing Opinion also fed. 78-3507.

10-22-82 Order denying Reh. of 04/03/81

11-04-82 Order Denying Rehearing of 10-08-82

9-24-82 Opinion S9. Also filed in 78-3507 issued in typewritten form pp 15704

8. Motions

2-15-80 Consolidate Appeals 78-3507 & 79-1633 Appellees. Dated 2-25-80, 3-10-80

11-16-82 Stay of Mandate (Appellants) Appellees 11-18-82 PAK Court Clerk. Dated 11-23-82

9. Other Docket Entries

1-14-80	Flg. Appellant's Notice of Issues on Appeal. (Send to Screening Judge)
2-26-80	Flg. Appellants' Application for Stay of Remedial election order pendente lite, etc. (sub 2-26-80 JRC)
2/29/80	Flg. Appellees' opposition to appellants' application for stay of elections.
3-10-80	Flg. Order granting Appellant's Motion for Stay of Remedial Election Pendente Lite, and further ordering that this appeal be consolidated with Nos. 79-3507 and 79-1633 (JPC, JWP & PAK) (also filed in Nos. 78-3507 and 80-5011)
4-29-80	Flg. Appellants, City of Pensacola & Escambia, et al., supp.authority. (CE) (Also filed
5/21/80	78-3507, 80-5011).
5/21/80	Fig. Appellees' letter dtd. 5/20/80 replying to court's letter of 5/16/80 regarding the filing of an additional brief. (also filed in #68-3507 & 79-1633) (C.E.).

(Continued)

10. Judgment or Mandate Information

3-2-81	Bill of Costs
10-23-81	Jdgt. as Mdt. Issd. to Clerk S9 (3-5-81) (as to Jenkins)
11-23-82	Jdgt. as Mdt. to Clerk
12-10-82	Record on Appeal Retd. to Clerk (2 vols)

11. Supreme Court Information No. 82-1295

12-6-82 Not. of Mot. for Stay "Denied" 12-2-82

2-15-83 Not of flg. an appeal on 2-2-83

9. Other Docket Entries (Con't)

9-12-80 Flg. appellee's supplemental authority (Also filed in 79-1633)

11-12-80 Flg. Appellant's letter of 11-5-80 as supp.authority. (CE)

3-11-81 Flg. Appellees' amended motion to extend time for filing petition for rehearing and en banc. (Sub 3/11/82 FAK)

3-12-81 Flg. Order GRANTING appellees, McMILLAN, et al. ext. time to April 4, 1981 in which to file pet. for rehearing & suggestion en banc. (See Order in File). (PAK)

3-1-82 Flg. appellant's LETTER re Election-CE.

9-24-82 Flg. opinion GRANTING appellees' petition for rehearing (regular) and VACATING opinion of 2-19-81; AFFIRMED and REMANDED (PAK) (SIGNED).

10-19-82 Fig. State Association of County Commissioner's MOTION F/Leave To File Amicus Curiae Brief in support of petition f/rehearing.

10-29-82 Flg. appellees' MOTION To Dissolve Stay of Elections. Sub.

11-8-82 Flg. appellant's OPPOSITION To The Appellees' Motion To Dissolve Stay of Elections.

11-04-82 Flg. order denying motion of State Association of County Commissioners for leave to file amicus curiae brief in support of suggestion for rehearing en banc. (PAK).

11/12/82 Flg. appellee's letter in response to appellant's opposition to appellees' motion to dissolve stay of elections. (Sub. xxxxxxxx)

11/12/82 Flg. motion of Sumter County for leave to file amicus curiae brief in support of for rehearing en banc.

11-12-82 Flg. motion of Hendry County Board of Commissions for leave to file brief in support of for rehearing en banc.

11/16/82 Flg. motion of Seminole County, Florida, for leave to file amicus curiae brief in support of petition for rehearing en banc of appellants.

11/16/82 Flg. motion of appellants for stay of mandate pending See S. 8 (Sub PAK 11/18/82)

11/16/82 Flg. motion of Citrus County for leave to file amicus curiae brief in support of for rehearing en banc of appellants.

11/18/82 Flg. appellees response to appellants motion for stay of mandate. (SUB. PAK 11/18/82.)

11/23/82 Flg. order DENYING motion of Sumter County for leave to file amicus curiae in support of the suggestion of en banc. (PAK) (bh)

11/23/82 Flg. order DENYING motion of Hendry County, FLA, for leave to file amicus curiae in support of the suggestion en banc. (Pak) (bh)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION

HENRY T. McMILLAN, ROBERT CRANE, CHARLES L. SCOTT, WILLIAM F. MAXWELL and CLIFFORD STOKES,
Plaintiffs,

vs.

ESCAMBIA COUNTY, FLORIDA; GERALD WOOLARD, KENNETH KELSON, ZEARL LANCASTER, JACK KENNEY, MARVIN BECK, individually and in their official capacities as members of the BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY; SCHOOL DISTRICT OF ESCAMBIA COUNTY: THE SCHOOL BOARD OF ESCAMBIA COUNTY; PETER R. GINDL, CAROL MARSHALL, RICHARD LEEPER, LOIS SUAREZ, A.P. BELL, FRANK BIASCO and JAMES BAILEY, individually and in their official capacities as members of the ESCAMBIA COUNTY SCHOOL BOARD: JOE OLDMIXON individually and in his official capacity as SUPERVISOR OF ELECTIONS FOR ESCAMBIA COUNTY
Defendants.

FILED
MAR 18
3.45 PM 1977
OFFICE OF CLERK
U.S. DISTRICT CT.
NORTH DIST. FLA.
PENSACOLA, FLA.

COMPLAINT

I.

Jurisdiction

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. The amount in controversy exceeds $10,000.00 exclusive of interest and costs. This is a suit in equity arising out of the Constitution of the United

States; the First, Thirteenth, Fourteenth and Fifteenth Amendments, and 42 U.S.C. §§ 1973 and 1983. This is also an action for declaratory judgment under the provisions of 28 U.S.C. §§ 2201 and 2202.

II.

Class Action

Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23(a) and 23(b)(2), Federal Rules of Civil Procedure. The class which plaintiffs represent is composed of all black citizens of Escambia County, Florida. All such persons have been, are being, and will adversely be affected by the defendants' practices complained of herein. The class constitutes an identifiable social and political minority in the community who have suffered and are suffering invidious discrimination. There are common questions of law and fact affecting the rights of the members of this class who are and continue to be deprived of the equal protection of the laws because of the election system detailed below. These persons are so numerous that joinder of all members is impracticable. There are questions of law and fact common to plaintiffs and the class they represent. The interests of said class are fairly and adequately represented by the named plaintiffs. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

III.

Plaintiffs

A. Plaintiffs Henry T. McMillan and Robert Crane are black citizens of Escambia County, over the age of twenty-one years, who live within the City of Pensacola.

B. Plaintiffs Charles L. Scott, William F. Maxwell and Clifford Stokes are black citizens of Escambia County, over the age of twenty-one years, who live in unincorporated areas of Escambia County, Florida.

IV.

Defendants

A. Escambia County is a political subdivision of the State of Florida. The Board of County Commissioners exercises general legislative, executive and administrative powers for Escambia County.

B. Charles Dease, Kenneth Kelson, Zearl Lancaster, Jack Kenney and Marvin Beck are the duly elected Commissioners of Escambia County.

C. The School Board of Escambia County is the supervisory and administrative body charged with conducting the affairs of the School District of Escambia County

D. Peter R. Gindl, Carol Marshall, Richard Leeper, Lois Suarez, A.P. Bell, Frank Biasco and James Bailey are the duly elected members of the School Board of Escambia County.

E. Joe Oldmixon is the Supervisor of Elections for Escambia County.

V.

A. Escambia County is governed by a five-member County Commission. The Commissioners are elected at-large by the qualified voters of the County for five residency districts. The partisan election uses numbered places with a majority vote/run-off requirement. The Commissioners serve for four-year staggered terms.

B. The School Board of Escambia County is composed of seven members. Five of the members must reside in one of five residency districts and two may reside anywhere in the County. The candidates run for numbered places, non partisan elections which have majority vote/run-off requirements. The members serve for four-year staggered terms. The members are elected at large by the qualified voters of Escambia County.

C. Escambia County has a population of 205,334, according to the 1970 Census, of which 40,362 or 19.7% are black. The major urbanized area is in and around the City of Pensacola, which has 59,509 people within the corporate limits. There is a substantial degree of residential racial segregation. 43% of the black citizens of Escambia County reside in five census tracts having greater than 80% black population.

D. All of the present officeholders for the School Board and County Commission are white. There has never been a black citizen elected to either the School Board or County Commission. Qualified black citizens have sought elections to both the School Board and County Commission, but all have been defeated in elections characterized by racially polarized voting. The following black citizens have unsuccessfully sought election to the School Board: Mr. Elmer Jenkins in 1976 and Mr. O. Leverette in 1970. The following black citizens have unsuccessfully sought election to the County Commission:

Mr. John Reed, Jr., in 1966 and 1970 and Mr. Nathaniel Dedmond in 1970. The following black citizens have unsuccessfully sought election to the County Commission: Mr. John Reed, Jr., in 1966 and 1970 and Mr. Nathaniel Dedmond in 1970. The futility of blacks gaining seats on the County Commission and School Board is a major barrier in recruiting qualified black citizens to run for these public offices.

E. The present at-large election systems for both the School Board and County Commission, employing numbered places and a majority vote/run-off requirement, operate in Escambia County to discriminate against black residents of the County in that their voting strength is diluted or minimized by the white majority.

F. Black citizens in Escambia County have been subjected to official discrimination directly in the exercise of the franchise through devices such as the poll tax and white primary. Additionally, other forms of official discrimination, such as denial of equal access to educational opportunities, combine to preclude blacks from effectively participating in the election process.

G. The County Commission has historically been less responsive to the needs of the black citizens than they are to the needs of the white citizens. Black neighborhoods have received a proportionatelly smaller share of county services. The School Board has also been less responsive to the needs of the black citizens than to the needs of the white citizens. A segregated school system was maintained until the School Board was ordered by the federal court to desegregate. This continued policy of being less responsive to the needs and rights of black citizens has forced the black community repeatedly to return to the federal courts for protection of their rights.

H. As a direct result of these and other factors, the at-large systems of electing members of the Board of County

Commissioners and School Board of Escambia County, as designed and/or presently operated, deny plaintiffs and the class of black citizens they represent equal access to the political process leading to nomination and election to the County Commission and School Board and, with respect to said black citizens, are fundamentally unfair, all in violation of their rights protected by the First, Thirteenth and Fifteenth Amendments to the Constitution of the United States; both the Due Process and Equal Protection Clauses of the Fourteenth Amendment; the Voting Rights Act of 1965, 42 U.S.C. § 1973; and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

VI.

Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a permanent injunction is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from the unconstitutional election system described herein.

WHEREFORE, plaintiffs respectfully pray this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this action to be in every way expedited and upon such hearing to:

1. Grant plaintiffs and the class they represent a declaratory judgment that the election systems complained of herein violate the First, Thirteenth, Fourteenth and Fifteenth Amendments to the Constituiton of the United States and 42 U.S.C. §§ 1973 and 1983.

2. Grant plaintiffs and the class they represent an order enjoining the defendants, their agents, successors, attorneys and those acting in concert with them and at their direction from holding, supervising, or certifying the results of any election for the School Board of Escambia

County and the Board of County Commissioners of Escambia County under the present election systems.

3. Order the apportionment of Escambia County School Board and the Escambia County Commission so that all members are elected from single member districts and the voting strength of black citizens is not debased, diluted, minimized or canceled out.

4. Award plaintiffs and the class they represent their costs in this action including an award of reasonable attorneys' fees.

5. Grant such other and further equitable relief as the Court may deem just and proper.

CRAWFORD, BLACKSHER, FIGURES
& BROWN
1407 DAVIS AVENUE
MOBILE, ALABAMA 36603

By: _____
J.U. BLACKSHER
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HENRY T. McMILLAN, ET AL., Plaintiff	)	
vs.	)	CIVIL ACTION NO. PCA 77-0432
ESCAMBIA COUNTY, FLORIDA, ET AL., Defendant.	)	

ANSWER AND AFFIRMATIVE DEFENSES

ESCAMBIA COUNTY

Subject to their affirmative defenses contained herein and to any and all affirmative defenses and motions filed by the other defendants in this action, the Defendants, Escambia County, Florida, Charles Deese (erroneously referred to as Charles Dease in the Complaint), Kenneth Kelson, Zearl Lancaster, Jack Kenny, Marvin Beck, individually and in their official capacities as members of the Board of County Commissioners of Escambia County, and Joe Oldmixon, individually and in his official capacity as Supervisor of Elections for Escambia County, and for their answer to the complaint of Plaintiffs say:

I

Jurisdiction

Said Defendants admit the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343, but deny each and

every other allegation contained in paragraph I of the Complaint.

II.

Class Action

Said Defendants deny each and every allegation contained in paragraph II of the Complaint.

III.

Plaintiffs

Said Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph III of the Complaint and, therefore, deny same.

IV.

Defendants

Said Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV, subparagraphs C and D of the Complaint and, therefore, deny same; admit the allegation of paragraph IV, subparagraph A, except that defendants deny having any responsibility for the establishment or continuation of the present electoral system for County Commissioners; admit the allegations of subparagraphs B and E of paragraph IV, except that Charles Deese is erroneously referred to therein as Charles Dease.

V.

Said Defendants admit the allegations of subparagraph A of paragraph V, except defendants deny there is any run off requirement for general elections; allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V, subparagraph B of the Complaint and, therefore, deny same; admit that Escambia County had a population of 205,334, according to the 1970 Census, of which 40,362 or 19.7% are black and that the major urbanized area is in and around the City of Pensacola, which has 59,507 people within the corporate limits, but deny each, and every other allegation contained in paragraph V, subparagraph C, of the Complaint; admit that all of the present officeholders for the County Commission are white, but allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the balance of paragraph 5, subparagraph D, of the Complaint and, therefore, deny same; deny each and every allegation contained in paragraph V, subparagraphs E, F, G, and H, of the Complaint.

VI.

Said Defendants deny each and every allegation contained in paragraph VI of the Complaint.

VII.

Said Defendants are obligated to pay expenses for costs and attorneys fees for the defense of this action.

FIRST DEFENSE

The Complaint fails to state a claim against said Defendants upon which relief can be granted.

SECOND DEFENSE

The Complaint fails to state a cause of action because of its failure to allege a discriminatory intent on the part of said Defendants, or any other person, in establishing the election system complained of.

THIRD DEFENSE

The Complaint fails to state a cause of action against said Defendants in their respective individual capacities because of its failure to allege any acts by said Defendants in their individual capacities and because of its failure to pray for any relief from said Defendants in their individual capacities as opposed to any relief from said Defendants in their respective representative capacities. In the Complaint no acts of commission or omission are attributed to any of said Defendants in their individual capacities. But, both from the caption and text of the Complaint, it is obvious that the Plaintiffs are attempting to sue both the Board of County Commissioners of Escambia County, Florida, a corporate entity which functions solely through its members in their representative capacities and the Supervisor of Elections as the individual members thereof personally, although the Complaint contains no allegations whatsoever of any individual acts done to, or omitted duties owed to, the Plaintiffs.

FOURTH DEFENSE

The relief prayed for by the Plaintiffs in their Complaint is impossible of performance by said Defendants since the election systems complained of in the Complaint and the conduct of the elections sought to be enjoined therein are not among the constitutional or statutory powers of said Defendants in their representative capacities but rather are, according to the Constitution and laws of the State of Florida, wholly within the powers and responsibilities of other officials, some of whom are not made parties to this suit and are not, therefore, within the jurisdiction of the Court. In doing any of the acts complained of in the Complaint, said Defendants were duly authorized by and acted under the authority of State law.

FIFTH DEFENSE

The State of Florida, the Department of State of the State of Florida, and Reubin O'D. Askew, Governor of the State of Florida, need to be joined in this action for a just adjudication of the issues. They are subject to service of process and their joinder will not deprive the court of jurisdiction over the subject matter of this action. In their absence, complete relief cannot be accorded among those already parties and they claim an interest relating to the subject matter of this action and are so situated that the disposition of the action in their absence may as a practical matter impair or impede their ability to protect that interest and leave Defendants subject to a substantial risk of incurring double multiple, or otherwise inconsistent obligations by reason of their claimed interest.

SIXTH DEFENSE

The alleged claims asserted against said Defendants do not arise out of the same transactions, occurences, or series of transactions or occurences as the claims asserted against the other Defendants in this action, nor do the alleged claims involve questions of law or fact common to all Defendants. Said Defendants will, therefore, be put to undue expense if they are required to proceed with their defense without a severance of the issues. The trial of the action will be confused by a joint trial of the claims asserted against said Defendants and against the other Defendants in this action, all to the prejudice of said Defendants and, therefore, the claims asserted against said Defendants should be severed from the claims asserted against the other Defendants in this action and tried separately.

LAST DEFENSE

Said Defendants hereby adopt all other motions, memoranda in support thereof, and defenses herein filed on behalf of the other Defendants in this action as their own motions, memoranda in support thereof, and defenses in the same manner and to the same extent as though each paragraph thereof were herein fully set forth.

WHEREFORE, said Defendants pray that the Complaint be dismissed with prejudice and that they be awarded their attorney's fees and costs.

RICHARD I. LOTT
COUNTY ATTORNEY

/s/

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer and Affirmative Defenses was furnished by regular U.S. Mail to James U. Blacksher, Attorney for Plaintiffs, 1407 David Avenue, Mobile, Alabama 36603; Larry T. Menefee, Attorney for Plaintiffs, 1407 Davis Avenue, Mobile, Alabama 136603; Kent Spriggs, Attorney for Plaintiffs, 324 West College Avenue, Tallahassee, Florida 32301; Jack Greenberg, Attorney for Plaintiffs, Suite 2030, 10 Columbus Circle, New York, N.Y. 10019; Eric Schnapper, Attorney for Plaintiffs, Suite 2030, 10 Columbus Circle, New York, N.Y. 10019; Charles S. Rhyne, Esquire, 400 Hill Building, Washington, D.C. 20006, Louis F. Ray, Jr., Attorney for the School Board of Escambia County, Sixth Floor Seville Tower, Pensacola, Florida 32501; Don Caton, attorney for the City of Pensacola, City Hall, Pensacola, Florida 32501, this 27th day of April, 1977.

/s/

RICHARD I. LOTT
COUNTY ATTORNEY

CONSOLIDATION ORDER
[CAPTION OMITTED IN PRINTING]

ORDER

It is ORDERED:

1. These cases are consolidated for the purpose of discovery only.

2. Originals of all depositions will be filed in 77-0432, with a copy of each such deposition filed in 77-0433, and with the parties agreeing, and the court approving, that the copy of each deposition filed in such suit shall be utilized as fully and to the same extent as though it were the original.

3. *McMillan, et al. vs. Escambia County, Florida, et al.*, No. 77-0432, and *Jenkins, et al. vs. City of Pensacola, et al.*, No. 177-0433, are hereby conditionally certified as a class action under Rule 23(b)(2), Federal Rules of Civil Procedure, with the class defined as all black citizens in Escambia County and the City of Pensacola, respectively. This conditional certification under Rule 23(c), Federal Rules of Civil Procedure, may be altered or amended before decision on the merits, if appropriate.

4. Counsel for all parties will submit memoranda of law by May 30, 1970 on the following issues:

(a) whether the State of Florida, the Governor and the Department of State are indispensable parties in No. 77-0432 and No. 77-0433; and

(b) whether these actions should proceed against members of the County Commission, County School Board and City Council in their individual capacities.

5. Unless time is extended by order of the court for good cause shown, all discovery proceedings, including

depositions of witnesses to be used for trial purposes, in these cases must be completed on or before August 18, 1977.

6. No motion seeking extension of time will be granted unless such motion is served and filed sufficiently in advance of the discovery completion date to allow it to be heard and disposed of, under the local rules of this court, on or prior to such discovery completion date.

DONE AND ORDERED this 18th day of May, 1977.

/s/

WINSTON E. ARNOW
Chief Judge

ARNOW, C. J. LETTER TO COUNSEL OF RECORD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
West Office Box 12347
Pensacola, Florida 32581

Winston E. Arnow
Chief Judge

August 4, 1977

Re: Henry T. McMillan, et al. vs.
Escambia County, Florida, et al.,
PCA 77-0432; Elmer Jenkins, et al.,
vs. City of Pensacola, Florida, et al.,
PCA 77-0433

Gentlemen:

As all of you know, by order of May 18, 1977, I required that the parties submit memoranda on two issues raised by certain "defenses" included in defendants' answer – one was the question whether the State, the Governor and the Department of State are indispensable parties. The other was the question whether these actions should proceed against the individual defendants in their individual capacities.

When there is a lack of necessary or proper parties, it is my understanding that such matter is properly brought before me by motion. My understanding of the rule is that motion is also required to dismiss a party who is not properly a party.

These questions concerned me during initial hearings because obviously if certain parties need to be joined they should be brought into the suit at an early stage so that we are not confronted with going back into discovery or other proceedings that took place before they were in the suit.

Since these issues are raised as defenses, I cannot now resolve them. I have, however, gone over the memoranda presented.

Counsel of Record August 4, 1977
PCA 77-0433

I have reached the conclusion neither the State, the Governor nor the Department of State are indispensable parties and, for that matter, even proper parties.

Insofar as the action's proceeding against the individual defendants in their individual capacities, relief sought, if granted, must, of course, be given against them in their representative capacities. Nonetheless, because of possible problems of enforcement which would run against them personally if such were to be required, it seems to me it may be that they should be retained in their individual capacities.

In any event, I do not see how much harm can be done by retaining them in their individual capacities, and I have no motion before me on which I can take action.

I assume that these matters can and will come up before me at some future time on pretrial conference or the like where they may properly be handled. As stated, I do not reach the conclusion there is any necessity for adding any parties at the present time.

Sincerely yours,

/s/ _____
WINSTON E. ARNOW

Copies to:
James U. Blacksher, Esq.
Larry T. Menefee, Esq.
Kent Spriggs, Esq.
Jack Greenberg, Esq.
Eric Schnapper, Esq.
Don J. Caton , Esq.
Charles S. Rhyne Esq.
William S. Rhyne, Esq.
Donald A. Carr, Esq.
Richard I. Lott, Esq.
Louis F. Ray, Jr., Esq.
Clerk, U.S. District Court, Pensacola, FL

[CAPTION OMITTED IN PRINTING]

PRETRIAL STIPULATION

Pursuant to the second amended order for pretrial conference entered April 13, 1978, the parties jointly submit the following pretrial stipulation:

A. Basis of Federal Jurisdiction

This Court has jurisdiction of the subject matter and the parties to these actions pursuant to 28 U.S.C. § 1343. Plaintiffs also assert the Court's jurisdiction pursuant to 28 U.S.C. § 1331.

B. Concise Statement of the Nature of the Action

These actions, conditionally certified as class actions, concern the constitutionality and lawfulness of the continued use of at-large elections of members of the Board of County Commissioners of Escambia County, and the School Board of Escambia County in light of alleged dilution, or minimization of black voting strength.

[32] **C. Brief, General Statement of Each Party's Case**

(1) for plaintiffs

1. Plaintiffs contend that the at-large election of County Commissioners and School Board members denies plaintiffs and the class of black citizens they represent equal access to the political process leading to nomination and election to said governmental bodies. Plaintiffs contend that, accordingly, the at-large election systems are fundamentally unfair, with respect to black citizens, and violate their rights protected by the first, thirteenth and

fifteenth amendments to the Constitution of the United States; both the Due Process and Equal Protection Clauses of the fourteenth amendment; the Civil Rights Act of 1870, 42 U.S.C. § 1971 (a)(1); the Voting Rights Act of 1965, 42 U.S.C. § 1973; and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

2. Plaintiffs will attempt to prove their constitutional and statutory causes of action according to the elements of proof prescribed in the quartet of recent decisions containing the latest word from the Fifth Circuit concerning dilution of minority voting rights by multimember districts. *Nevett v. Sides*, _____F.2d_____ (5th Cir., March 29, 1978); *Bolden v. City of Mobile*, _____F.2d _____ (5th Cir., March 29, 1978); *Bull v. City of Shreveport*, _____F.2d _____ (5th Cir., March 29, 1978).

3. Accordingly, plaintiffs contend, the evidence will show intentional, invidious racial discrimination by the State of Florida, its officers and subdivisions according to the following alternative standards.

a. The systems of at-large elections in both the primary and general elections, with respect to the County Commission and the School Board, were each designed and have been maintained purposefully and invidiously to discriminate against black voters.

b. Regardless of direct and circumstantial evidence of their specific racially discriminatory intent, the aforesaid at-large election systems carry forward and perpetuate the effects of past intentional devices employed by the State to discriminate against black voters.

c. Intentional racial discrimination is demonstrated in the aforesaid at-large election systems by the presence of an aggregate of the factors set out in *Zimmer v.*

McKeithen, 485 F.2d 1297 (5th Cir. 1973) (en banc), aff'd sub nom. *East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976).

4. The majority opinions *Nevett*, *Bolden* and *Bull*, not withstanding, plaintiffs contend that the evidence will establish that the aforesaid at-large election systems [33] have the effect of minimizing or cancelling out the voting strength of the black minority in Escambia County and the City of Pensacola, and that, regardless of their intent, these election systems violate the fifteenth amendment and the Civil Rights Act of 1870 and the Voting Rights Act of 1965. See *Nevett v. Sides, supra,* (Judge Wisdom concurring).

5. Plaintiffs seek the following relief:

a. A declaratory judgement that the election systems complained of herein violate the constitutional amendments and statutes set out above;

b. An order enjoining the defendants, and each of them, their agents, successors, attorneys and those acting with them and at their direction from holding, supervising, or certifying the results of any election for the Board of County Commissioners of Escambia County and the School Board of Escambia County under the present election systems;

c. An order requiring that the aforesaid local governmental bodies be apportioned into single-member districts so that all members of the County Commission and the School Board will be elected in a manner that avoids debasing, diluting, minimizing or cancelling out the voting strength of black citizens;

d. An award of plaintiffs' attorneys' fees and costs;

e. Such other and further equitable relief as the Court may deem just and proper.

(2) for defendants

Plaintiffs' lawsuit rests solely on the unsupportable constitutional premise that blacks have a federally guaranteed right to representation by blacks.

Defendants have a legitimate governmental interest in an at-large electoral system instituted and maintained for reasons which are wholly non-discriminatory. At-large elections insure that a County Commissioner or School Board member will have a county-wide perspective thereby alleviating the ward-heeling phenomenon that accompanies single-member district election systems. At-large elections afford all voters and interest groups an opportunity to influence the performance of all Commissioners and School Board members. Black citizens of Escambia County have equal access to all facets of the local political processes. There are no restrictions, formal or informal, on black registration, voting, candidacy for office or any other aspect of electoral participation. The support of black voters is actively sought by all candidates for office and is often decisive. There is no evidence of any correlation whatever between the voters' race and their ballot choices in elections that have not involved black [34] candidates. White Escambia County voters have on numerous occasions demonstrated they will cast their ballots for qualified black candidates.

Given these voting patterns, County Commissioners and School Board members must be equally responsive to the interests of black citizens. The record of their performance shows that they are. Indeed, the Escambia County blacks have far more real political power under the pre-

sent at-large electoral structure than they would under the single-member system which plaintiffs ask this Court to establish. Under such a system only one County Commissioner and School Board member would have any substantial black constituents and the rest would have little or no reason to consider black political interests. Any polarization that exists would actually increase or be exacerbated in a predictable four to one vote.

• • • •

F. Concise Statement of Facts Which Are Admitted and Will Require No Proof at Trial

1. According to the latest complete United States Census figures (1970), Escambia County has a population of 205,334, of whom 163,014 or 79.4%, were white persons; 40,362 or 19.7%, were black persons. There were then 80,371 registered voters, of whom 67,297 or 83.8% were white and 13,037 or 16.2% were black. There were then 96,517 white persons of voting age, of whom 69.7% were registered to vote, and 19,485 black persons of voting age, of whom 66.9% were registered to vote.

According to the 1960 census, the Black population of Escambia County twenty-one (21) years of age and older was 76,688. There were 9,148 blacks (50.7%) and 53,865 whites (70.2%) registered to vote.

2. The Board of County Commissioners serves as the legislative and governing body of Escambia County. the Commission appoints a County Administrator who is the chief administrative head of the County and who carries out the policies of the Commission and administers all departments of the County government. Prior to adopting a County Administrator's ordinance in 1977, the Commissioners had full authority to administer the day-to-day

operation of county business. All employees within the County's administrative departments are selected and employed by the County Administrator pursuant to regulation of the County Civil Service Board, whose members are appointed by the Governor of Florida. The employment of County department heads, who are not within the Civil Service system, is subject to confirmation by the Commission, however.

3. Since Escambia County has no charter, the Commissioners have traditionally had to act within the guidelines provided by the Florida Legislature in general law and by special or local laws applicable to this County. However, since the 1968 amendments to the Constitution of Florida, and subsequent home rule legislation, the County Commission can now pass ordinances and enter into agreements with other governmental agencies, as necessary for the exercise of its powers.

4. The County Commission is authorized to plan for development, establish zoning and business regulations on their own volition, set the budget for all County agencies, set the County millage, issue bonds for lawful purposes, issue franchises for utilities, and review rates charged for public services. The Commission also approves financial obligations of the County, has charge of all County buildings, appoints various citizen boards, approves plats for subdivisions, provides legal representation for the County, alters County Commission district boundaries upon the recommendation and approval of the Supervisor of Election and provides for County roadbuilding and maintenance. Other powers include hospital and ambulance service, health, fire protection, welfare, recreational and cultural facilities and programs.

5. Members of the Escambia County Commission are elected at-large by the qualified voters of the entire Coun-

ty. Each Commissioner must reside in one of five residency districts. The Commissioners serve for four-year staggered terms, and receive an annual salary of $20,402.88.

The terms of the Commissioners residing in residency district 2 (Kelson) and 4 (Kenney) will expire in November 1973. The terms of the other three Commissioners will expire in November 1980. There is a majority vote requirement in the primary elections. Candidates run for numbered places.

6. Article VIII, Section 5 of the Constitution of the State of Florida, (1885) ratified in 1900, provided that county commissioners shall be elected by the qualified electors of said county. For some number of years prior to 1954, candidates for County Commission were nominated only by the voters of their several residency districts. In 1954, the Florida Supreme Court held the single-member district nomination process to be violative of the Florida Constitution.

7. Florida law provides for single, County-wide school districts as a part of the constitutionally-mandated "uniform [state] system of free public schools". *The school district of Escambia County is governed by state laws, rules and regulations and minimum standards of the State Board of Education, and its administrative and supervisory agency, the State Department of Education, and policies adopted by the School Board of Escambia County,* which is the local governmental body charged with organizing and controlling the public schools of the School District of Escambia County. Responsibility for the administration of the schools and for the supervision of instruction in the district is vested in the Superintendant of Schools, a separate constitutional officer who, in Escambia County, is elected. The School Board is composed of seven members, all elected at-large by the

qualified voters of the County. Five of the members must reside in one of five residency districts, and two may reside anywhere in the County. School Board members serve for four year staggered terms. The terms of members residing in residency districts 1 (Bell), 3 (Leeper), and 5 (Gindl) will expire in November 1978. The terms of members residing in residency districts 2 (Suarez) and 4 (Mashall) and of at-large members Biasco and Bailey will expire in November 1980.

8. By law, the School Board has qualified final approval of instructional personnel recommended for employment by the Superintendent and of non-instructional personnel recommended for employment by the Superintendent from the Civil Service Service roster. The Board also must approve purchases and payments, adopts the annual budget recommended by the Superintendent, and decides school location and construction questions.

9. The Escambia County school system includes 168 school centers. The system provides general and special education for children from kindergarten through grade 12 plus vocational training and community schools for adults. The 1977-78 enrollment was approximately 47,000 students.

10. Florida law directs that the Board establish a School Advisory Committee broadly representative of the community served by the school for each school in the district and composed of teachers, students, parents, and other citizens. Each Committee assists the principal in the preparation of his annual school report on the status of education. Members of the School Advisory Committees are appointed by the principals of the various schools pursuant to law.

11. The Supervisor of Elections is a constitutional office, elected for a four-year term. He is in charge of registration of voters, qualification of candidates for local offices, appointment of poll workers, supervision of voting, issuance of absentee ballots, canvassing election results together with the chairman of the County Commission and with a County judge, and certification of elections.

12. A permanent registration roll is kept current by the Supervisor of Elections, who mails renewal cards in the fall preceding general elections to each elector who has not voted in the past four years. Names of those failing to return their renewal cards are withdrawn from the registration records; those having voted within the four years are carried on the rolls. Names of persons removed from the registration rolls can be reinstated anytime the registration books are open. Members of the armed forces and members of their families, citizens of the United States who are permanent residents of the State of Florida who are temporarily residing outside of the County, the physically disabled, and residents of the State who are unable to register in person may register by mail when the books are open by making application for absentee registration. The law requires that registered voters notify the Supervisor of changes of address and that they must re-register if they change their names or wish to change their party afiliation. The registration books close 30 days before the first primary election.

13. The racial identification of voters on the registration rolls is set forth on the voters' registration identification cards on file in the Supervisor of Election's office, pursuant to Section 97,071, Florida Statutes.

14. For election purposes, Escambia County is divided

into precincts by the County Commission upon the recommendation and approval of the Supervisor of Elections. There are now 96 precincts in Escambia County. A citizen votes in the precinct in which he or she resides. The County Commission and School Board elections are partisan; that is, candidates are nominated through primary elections. In order to vote in the primary, a citizen must register as a Democrat or Republican and must vote his or her stated party preference. Independents may not vote in party primaries. Parties having a number of registered voters equal to at least 5% of the total number of registered voters in the state on January 1 of a general election year are given major party status and are required to utilize the primary election process to nominate their candidates for the general election. Voters are not required to follow any party lines in a general election.

15. A qualified candidate may offer himself in a primary election, provided that he pays the specified fee and takes an oath of loyalty to the party. The qualification fee for the primary election is 3% of the annual salary of the office sought plus another two percent for the party executive committee. A candidate who canot pay the filing fee without imposing an undue burden on his or her personal resources or on resources otherwise available to the candidate, may have his or her name placed on the ballot by means of a petition signed by 3% of the registered electors of the party in the County. A majority of the votes cast is required for primary nomination. If there is no majority, the two leading candidates run in a second primary, or runoff, three weeks later.

16. The major parties are governed by the state and county executive committees, elected by the registered voters of the respective bodies. As of 1977, there were 84,690 Democrats, 13,948 Republicans, and 3,307 others

registered in Escambia County. Each party executive committee is composed of one man and one woman from each precinct, except in precincts of over 1,000, where two men and two women serve. The present committees were elected in 1976 for four-year terms.

17. Since 1945 there have been no racially designated legal restrictions on the ability of black citizens of Escambia County to register, vote or campaign for the County Commission or School Board.

18. There are no formal candidate "slating" organizations involved in County Commission or School Board elections. There have been various, less institutionalized, "endorsing" groups which have sought support for various candidates for the County Commission and School Board. These groups have endorsed both black and white candidates.

19. The filing fee for candidates for primary elections for the County Commission and the School Board is 5% of the annual salary. The annual salary of County Commissioners in Escambia County is $20,402.88. For purposes of computing the filing fee, the annual salary of School Board members is $2400. Candidates for whom the filing fee is an undue financial burden may qualify by obtaining a petition from 3% of the registered voters of the party by which the candidate seeks nomination. A 5% petition requirement existed prior to 1978, Section 99.092 and 99.095, Florida Statutes.

20. On four occassions in history (all in the last ten years) a black candidate has run for Escambia County Commission. No black has ever been elected. John Reed, a black candidate in 1966, received 8,225 votes, compared with 14,592 for Cobb, 9,017 for Fredrickson, and 4,298 for Ward, the white opponents. Elmer Jenkins, a black

candidate in 1968, received 9,704 votes in the first primary, compared with 19,168 for Armour, 8,159 for Gindl, and 4,901 for Whatley, the white opponents. In the primary runoff, Jenkins received 14,636 votes and Armour 25,408. Nathaniel Dedmond, a black candidate in 1970, received 7,373 votes, compared with 19,700 for Kenney and 8,658 for Davis, the white opponents in the democratic primary. John Reed ran again in 1970 and received 5,240, compared with 11,840 for Barnes, 9,557 for Cobb, and 9,037 for Kelson, the white opponents.

21. On five occasions in history (all in the last seven years) a black candidate has run for the Escambia County School Board. No black has ever been elected. Otha Leverette, a black candidate in 1970, had no opposition in the Democratic primary. He received 21,065 votes in the general election, compared with 22,523 for Republican Richard Leeper, the white opponent. Elmer Jenkins, a black candidate in 1974, received 12,275 votes, compared with 10,933 for Sanders, the white opponent, in the only primary. In the general election, Jenkins received 21,098 votes, compared with 22,547 for incumbent Leeper. Eddie Stallworth, a black candidate in 1974, ran as a Republican in the general election. He received 9,673 votes, compared with 32,612 for Bell, his white opponent. Donald Spence, a black candidate in 1976, received 15,956 votes in the first primary, compared with 10,079 for Marshall and 10,717 for Smith, who are both white. He lost to Marshall in the runoff 29,106 to 19,176. Elmer Jenkins sought election again in 1976 and received 12,257 votes in the first primary, compared with 9,765 for Bailey, 5,244 for Forester, 1,362 for King, 5,606 for Lee, 5,071 for MacGill and 1,173 for Southard, all white candidates. He lost to Bailey in the runoff 26,786 to 20,526.

22. With respect to the responsiveness of County government to the needs of black citizens, Plaintiffs do not plan to contest the delivery of services in the following areas: water; sewers; traffic control; fire hydrants; mosquito control; library services; ambulance service; garbage collection and disposal; drainage planing; housing and corrections.

23. With respect to School Board responsiveness, Plaintiffs have no plans to contest the Board's failure to comply with the Court's orders in *Augustus v. School Board of Escambia County* since entry of the terminal desegregation order in April 1969. However, Plaintiffs will contend that certain legal positions taken by the Board in *Augustus* have failed to reflect the interests of the majority of black citizens. In addition, Plaintiffs will only challenge the Board's record of appointments of a non-employment type to advisory boards, committees and councils and the Board's alleged racial application of suspension and expulsion policies.

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PRE-TRIAL ORDER

1. This is the pre-trial order that is entered in both of these cases. All of the matters included in the pre-trial stipulations in these two cases are made a part of the order insofar as it pertains to such case, except to the extent such may be altered or amended at the pre-trial conference.

2. At pre-trial hearing the court concludes that these cases will be consolidated for trial with, however, there being reserved the right of any party during the trial, or the court on its own motion, to sever for trial should it appear during the course of the trial that severance of the cases for completion would be advisable.

3. At pre-trial conference there is some question raised whether the matter contained in the second paragraph under paragraph F5 of the pre-trial stipulation is correct. The question presented is what is the exact situation respecting the majority or plurality vote in runoff elections insofar as the general election is concerned, and with this being limited to the School Board and County Commission. Prior to trial the parties will check out the law and by stipulation to be made a part of the record in this case set forth with exactness what the situation is respecting such.

4. At pre-trial conference it was agreed that as a matter of law those seeking election to the School Board in Escambia County, Florida, qualify in and run for election from a numbered position.

5. At pre-trial conference it is stipulated and agreed between the parties as follows: that in elections in both citywide and countywide races since 1955, with a few purported exceptions, there has been no racially polarized voting in elections in which all candidates were white.

6. At pre-trial conference it was agreed between all parties that where they have stipulated there were no formal candidate "slating" organizations involved in elections they mean by that that there has been no regularly constituted organization that regularly presented a slate of candidates in an election such as might be done by a political party – that neither the Democratic nor the Republican party in this county in any of these elections does, either in city council elections or in School Board or County Commission elections, insofar as primaries are concerned, come forward with a slate of candidates, and that in the primary elections the parties do not support or endorse any candidate, although both parties in the general election endorse whoever their nominees have been as a result of the primaries.

7. It is stipulated at the pre-trial conference as follows: a fairly constructed single-member district system for the election of Escambia County Commissioners and Escambia County School Board members would produce one black majority County Commission and School Board district each out of five.

8. At pre-trial conference defendants' objection to plaintiffs' attempt to base a cause of action on the 1870 Civil Rights Act because it was not pleaded in the complaint is overruled on the ground. The fact it was not pleaded will not keep them from pursuing it for whatever it is worth here.

9. At pre-trial conference the question of dismissal of the parties defendant in their individual capacities was presented to the court on motion. It was made clear at the pre-trial conference that plaintiffs do not seek under the complaint filed in this case and will not seek any judgment for attorney's fees or court costs against these parties in

their individual capacities and the court agrees that in the pleadings presented to the court there would be no basis for any such relief against them individually.

The court does conclude that they should be left in for purposes of injunctive relief and for purposes of enforcement of any injunctive decree entered, if such is entered. For that reason such motion is denied.

10. Prior to trial, in the light of possible changes in defendants before the court in the representative capacities the parties will jointly agree on what changes have been made and under the rules come before this court and substitute those who now should be here in such representative capacities.

Inasmuch as these defendants are left in individually the substitution will take out of this case both individually and in their representative capacity those who are no longer in office and will substitute those now in office in their place individually and in such representative capacity.

11. Prior to trial the parties will endeavor to agree on such newspaper clippings or items that plaintiffs wish to present in evidence, and to the extent they are unable to agree, will each provide the court with memorandum of law going into the admissibility at the trial of this case, such to be done no later than May 12, 1978.

12. Prior to trial the parties will endeavor to stipulate on the events occurring in the constitutional convention now convened respecting the question of single districting and at-large districting and the actions of the commission in connection therewith, to avoid the necessity of proof thereof at trial.

13. At the trial of this case qualification of experts will be done by the parties in this way: each counsel present-

ing an expert will have a list of that witness's qualifications as an expert and will read them to the expert and will ask the expert to state whether or not as read they are correct in order to save time in qualifying him as an expert.

14. The parties at the pre-trial conference have agreed with each other and before the court that respecting the exhibits of the respective parties no objection on authenticity or foundation proof requirements will be made to any exhibit but the parties have reserved the right to object to such exhibits on other grounds. Prior to trial each party will go over the exhibits of the other parties and in consultation, if necessary, will endeavor to agree to the full extent possible on such exhibits that will be coming into evidence without objection of any kind. The foregoing ruling does not mean that regression analyses will be placed in evidence without being established for such purpose by testimony of the expert who is presenting them.

15. Respecting the regression analyses, the defendants prior to trial will go over them to see whether or not they have objections based on the record showing that they are not valid statistical analyses of whatever is involved in them, with the viewpoint of trying to save time at trial, if possible.

16. Plaintiffs are granted leave to take the depositions of defendants' three experts whom they have recently announced they propose to call at trial, in advance of trial.

17. There is added to the list of witnesses for the city the name of Steve Garman, Westminister, Colorado.

18. Exhibits 26, 27 and 32, at the request of counsel for the defendant city, are stricken from the pre-trial stipulation.

19. Respecting all exhibits, the parties will endeavor to agree before trial which ones are coming in without objection and, to the extent that they are unable to agree and there is an evidentiary problem involved, will advise the court and each other with memorandum concerning such no later than May 12, 1978.

20. There is added to defendant County Commission's proposed list of exhibits a copy of the Escambia County Civil Service Board Rules and Regulations.

21. This case is set for trial commencing at 9:00 o'clock A.M. On Monday, May 15, 1978.

DONE AND ORDERED this 12 day of May, 1978.

WINSTON E. ARNOW
Chief Judge
United States District Court

[CAPTION OMITTED IN PRINTING]

NOTICE OF PROPOSED COUNTY CHARTER

NOTICE IS HEREBY GIVEN of a proposal by the Escambia County Charter Commission, created pursuant to Chapter 78-505, Laws of Florida, for a charter form of government for Escambia County. A certified copy of the proposed charter, as filed in the office of the Comptroller of Escambia County, is attached as an appendix hereto. In accordance with the authority granted to it by the aforesaid law, the Escambia County Charter Commission has scheduled for November 6, 1979, a referendum election at which time the electors of Escambia County would approve or disapprove the proposed charter.

All conditions precedent to the Court's decision to approve or disapprove Defendant Escambia County's remedial plan for electing county commissioners have now been met. This Court's judgment and memorandum decision entered on July 10, 1978, directed Defendant Escambia County to submit within forty-five (45) days a remedial plan for electing county commissioners. Defendant Escambia County submitted a plan to the Court on August 24, 1978. However, on September 21, 1978, Defendant Escambia County adopted an ordinance substantially revising the plan theretofore submitted to the Court. After considering the memorandum of counsel and discussing the matter of the remedial plan at a hearing on September 25, 1978, the Court entered a memorandum on October 4, 1978, directing counsel for the parties to confer with representatives of the Escambia County Charter Commission (which was created and authorized to draft a proposed charter for the government of Escambia County which charter might provide for an alternative means of electing county commissioners) to ascertain whether or not

the Charter Commission would be willing to submit its plan for electing county commissioners for the Court's review. By letter dated October 10, 1978, counsel for Defendant Escambia County advised the Court that the Charter Commission had declined the Court's invitation and further advised the Court that at that time February 1979 was the best available estimate for the time for completion of the draft of the proposed County Charter and that a referendum election on the charter question was expected to be scheduled for May 1979. No further consideration of the matter has been given until present. The final draft of the proposed County Charter was completed on June 18, 1979, and filed in the Office of the Clerk to the Board of County Commissioners on June 29, 1979. The Charter Commission has determined that November 6, 1979, is the date upon which a referendum election should be held so that the voters may approve or disapprove of the charter.

The plan for electing county commissioners in the proposed charter is substantially similar to the ordinance adopted on September 21, 1978, by Defendant Escambia County. Both plans provide for a seven member Board of County Commissioners with five members to be elected from single-member districts and two members to be elected by the voters of the county at-large. However, while the plan heretofore submitted to the Court by Defendant Escambia County has fixed the boundaries of contiguous and compact districts conforming as nearly as possible with the one man-one vote requirement, such task under the Charter Government would be undertaken by a Reapportionment Commission.

However, Defendant Escambia County wishes to emphasize that neither the proposal of a county charter nor

any of its substantive terms has any bearing on the validity of the legislative remedial plan of Defendant Escambia County heretofore submitted to the Court. For the reasons set forth in Defendants' September 15, 1978, memorandum, the Court should approve and accept Defendant Escambia County's remedial plan. The proposal of a county charter, regardless of its form or contents, is merely a means of presenting to the electors of the County the option of adopting an alternative form of county government. The charter proposal contains many provisions which substantively affect and change county government. Any such charter may or may not propose to revise the procedure for electing county commissioners provided for in the general law of Florida. The mere proposal of any such charter does not limit the legislative authority of the Board of County Commissioners theretofore exercised and should not be construed by the Court to have any force or effect of law whatsoever until the charter proposal is approved by vote of the electors of the County.

In any event, because the charter proposal for electing county commissioners is so similar to the plan heretofore adopted by Defendant Escambia County and submitted to the Court, nothing would be gained by delaying consideration of Defendant Escambia County's remedial plan until after a referendum on the proposed charter.

The time is now ripe for the Court to approve or disapprove the remedial plan heretofore adopted by ordinance by Defendant Escambia County and filed with the Court. Should there be an appeal from the Court's decision, it would be in the interest of judicial economy that the matter be decided promptly so that any appeal therefrom might be consolidated and considered with the pending appeal on the merits of the Court's July 10, 1978, decision on Plaintiffs' dilution claim. This would be in the best in-

terests of Plaintiffs, Defendants and the public alike, all of whom are anxious to determine finally the form of government for the future of Escambia County.

Respectfully submitted,
/s/ John W. Fleming

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Attorneys for Defendant Escambia County

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Suite 800
Washington, D.C. 20036

Attorneys for Defendant Escambia County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered by regular U.S. Mail to J.U. Blacksher, Esquire and Larry T. Menefee, Esquire of Crawford, Blacksher, Figures & Brown, 1407 Davis Avenue, Mobile, Alabama 36603, Kent Spriggs, Esquire, 324 West College Avenue, Tallahassee, Florida 32301, Jack Greenberg, Esquire and Eric Schnapper, Esquire, Suite 2030, 10 Columbia Circle, New York, New York 10019, W. Edward Still, Esquire, 601 Title Building, Birmingham, Alabama 35203, Attorneys for Plaintiffs, and Don J. Caton, Esquire Second Floor, City Hall, Pensacola, Florida, Attorney for Defendant City of Pensacola, and Louis F. Ray, Jr., Esquire, 226 South Palafox Street, Pensacola, Florida 32501, this 5th day of July, 1979.

John W. Fleming /s/John W. Fleming

THE PROPOSED CHARTER FOR THE HOME RULE OF ESCAMBIA COUNTY, FLORIDA Approved June 18, 1979.

ARTICLE I
CREATION OF THE GOVERNMENT

SEC. 101 PURPOSE

We, the people of Escambia County, in order to create a more responsible and efficient local government, do ordain and establish this Charter of Escambia County, Florida as our Home Rule Charter and form of government, in accordance with the Constitution and laws of the State of Florida.

SEC. 102 PROHIBITION OF CONSOLIDATION

Notwithstanding any provision herein, this Charter shall not be deemed to authorize or permit the consolidation of the government of Escambia County and any municipality therein, and the County shall not consolidate its government with any muncipality therein, except pursuant to an election held in accordance with the Constitution of the State of Florida, and under a special law specifically providing for such an election, which shall provide that no consolidation shall be effected unless the qualified County electors residing in areas within and without any municipality concerned vote in the election and a majority of such voters in both areas shall vote in favor of consolidation.

SEC. 103 BODY CORPORATE AND POLITIC

Escambia County shall be a body corporate and politic and as such shall have all rights and powers of local self-government which are now, or hereinafter may be, provided by the Constitution and Laws of Florida and this Charter.

SEC. 104 NAME AND BOUNDARIES

The corporate name of this County government shall be "Escambia County," hereinafter referred to as the "County," and shall be so designated in all actions and proceedings concerning its rights, powers, properties, and duties. The County seat shall be in Pensacola, Florida, and the boundaries of the County shall be those presently designated by Law.

ARTICLE II
POWERS AND DUTIES OF THE COUNTY

SEC. 201 GENERAL POWERS OF THE COUNTY

The County shall have all the general powers of local self-government not inconsistent with general law, the Constitution of Florida, and this Charter.

SEC. 202 SPECIAL POWERS

The County shall have all authority, powers, and duties heretofore granted by legislative special acts, general laws of local application, or ordinances, as may be in force at the effective date of this Charter and which are not inconsistent with this Charter.

SEC. 203 SECURITY OF THE CITIZEN'S RIGHTS

In order to secure to the citizens of the County protection against abuses and encroachments, the County shall use its powers to provide for all citizens:

(1) *Just and Equitable Taxation*: The County shall prevent the imposition of any tax within the County in excess of the limitations imposed by the Constitution or Laws of the State of Florida;

(2) *Proper Use of Public Property:* The County shall prevent the use of public property or taxing power for the benefit of private individuals, partnerships, or corporations in violation of the restrictions imposed by the Constitution or the Laws of the State of Florida;

(4) *Full Disclosure of Public Records and Proceedings*: All meetings and procedings established by the County shall be open to the public as provided by the Laws of Florida. All official County documents and reports, except those which have been specifically prepared for use in court proceedings, criminal law enforcement, those which would violate a person's right of privacy, or which are working papers or otherwise merely supportive of a final document or report, shall be open for public inspection, and the agency or official having custody and control of such public records shall, upon request, supply certified copies of the records requested for a reasonable fee as established by ordinance;

(a) *Protection of Human Rights;* The County shall establish such provisions, pursuant to state and federal law, as may be required for protection of citizen rights from discrimination based upon religion, political affiliation, race, color, age, sex, or national origin, and by providing and insuring equal rights and opportunities for all citizens of Escambia County.

SEC. 204 DIVISION OF POWERS

This Charter hereby established separation between the legislative and administrative functions of this government. The establishment and adoption of policy shall be legislative and the responsibility of the Board of County Commissioners; the execution of that policy shall be administrative and the responsibility of the County Administrator. Elected County Charter Officers shall also

have such administrative functions and responsibilities as may be provided by general law, not inconsistent with this Charter. Judicial functions shall be as provided by general law.

SEC. 205 CONSTRUCTION

The specified powers in this Charter shall not be construed as limiting, in any way, the general or specific powers otherwise granted or authorized in this Charter. It is the intent of this article to grant to the County full power and authority to exercise all governmental powers necesary for the effective operation and conduct of the affairs of the Charter Government. All descriptive nouns and pronouns within this Charter shall be construed as singular or plural, or masculine or feminine, as the context may require the construction of positions, offices, and the other provisions herein.

SEC. 206 EXERCISE OF POWERS

All powers of the County shall be exercised and executed as provided by this Charter or, if the Charter makes no provisions, as provided by general law.

SEC. 207 OATH

All elected or appointed officers, board members, or persons serving in positions specified in this Charter shall, as a qualifying condition precedent to serving, swear or affirm the oath of public officers set out in the Constitution of the State of Florida, said oath to be filed with the Clerk of the Circuit Court.

ARTICLE III
LEGISLATIVE BRANCH – COUNTY COMMISSION

SEC. 301 COMPOSITION – COMMISSION

Except as otherwise provided in this Charter, all powers of the County shall be vested in a Board of County Commissioners of seven (7) elected members. The County shall be divided into five (5) districts. One (1) Commission member shall be elected from each District by the electors of that District, and two (2) shall be elected by the electors of the County at large; one (1) Commissioner-at-large shall be designated as Commissioner-at-Large I, and the other Commissioner-at-large shall be designated as Commissioner-at-Large II.

SEC. 302 TERMS OF OFFICE

All County Commmissioners shall be elected for staggered terms of four (4) years, except as provided for in this section. Upon adoption of this Charter, the five (5) district seats created by this Charter shall be filled at the next general election by electing a Commissioner from each of the even numbered districts for four (4) years, a Commissioner from each of the odd numbered districts for two (2) years, Commissioner-at Large I for a term of (2) years, and Commissioner-at-Large II for a term of four (4) years. Commissioners elected under this Charter shall be limited to two (2) consecutive terms. The district boundaries and numbers in effect on the date this Charter is adopted shall be used in the aforementioned election.

SEC. 303 CONTINUANCE OF COMMISSIONERS

Commission members in office on the effective date of this Charter shall continue in office as a Commissioner of the district from which each qualified until the election and qualification of their successors.

SEC. 304 QUALIFICATIONS

(1) All County Commissioners shall be qualified electors of the County and shall have been a resident of the County for at least one (1) year immediately preceding the date on which they qualify to run for office; District Commissioners shall have been a bona fide qualified voter within the district from which they qualify to run for office for at least six (6) months prior to the date on which they qualify to run for office. Any Commissioner who changes residence from the County, and any Commissioner elected with a district who changes residence from the district from which the Commissioner was elected, shall be deemed to have vacated his office.

(2) If a Commissioner ceases to be a qualified elector of the County, or is convicted of a felony or a crime involving misfeasance or malfeasance in office, he shall be deemed to have vacated his office.

SEC. 305 QUORUM; VOTING

Four (4) Commission members shall constitute a quorum to do business, but a lesser number may adjourn from time to time. The affirmative vote of not less than four (4) Commission members shall be necessary to pass or adopt all matters under consideration by the Commission, except where a greater number is required under this Charter. A vote to adjourn may be adopted by a majority of the members present. No member shall be excused from voting, except on matters involving a conflict of interest. Voting shall be by roll call and the "yeas" and "nays" shall be recorded.

SEC. 306 MEETINGS OF COMMISSION

(1) The Commission shall meet regularly at least twice in every month at such time and place as the Commission may prescribe by rule, but at least one meeting each month shall be held in the evening hours.

(2) Special meetings shall be called by the Clerk of the Commission upon request of the Chairman of the Commission or two (2) members of the Commission. Written notice thereof shall be given and shall state the subject or subjects to be considered at the special meeting, and no other subject shall be considered. Special meetings shall require not less than twenty-four (24) hours actual notice to each Commissioner, except in an emergency.

(3) Meetings of the Commission and of the committees thereof shall be open to the public, and the rules of the Commission shall insure that the citizens of the County shall have a reasonable opportunity to appear and to be heard.

(4) An agenda for each meeting shall be prepared and made available at least twenty-four (24) hours prior to the meeting, and non-agenda items shall be acted upon only in an emergency situation which requires action prior to the next regular meeting.

SEC. 307 POWERS REGARDING ELECTIONS, MEMBERS, RULES AND BUSINESS

(1) The Commission may determine the election and qualifications of its members in the event there is uncertainty relating thereto and, in such cases, shall have power to subpoena witnesses and compel the production of all pertinent books, records, and papers; but the decision of the Commission in any case shall be subject to judicial review.

(2) The Commission shall determine its own rules and order of business and shall provide for keeping a written record of proceedings.

SEC. 308 LEGISLATIVE PROCEDURES – EFFECTIVE DATES OF ORDINANCES AND REGULATIONS: EMERGENCY MEASURES

All ordinances passed by the Commission, in the manner provided by general law and this Charter, shall be filed with the Department of State within ten (10) days after enactment and shall take effect upon receipt of official acknowledgment from that office; provided, however, that any ordinance may prescribe a later effective date. Emergency enactments shall follow the procedures as set forth in general law.

SEC. 309 RIGHTS OF VARIOUS OFFICERS TO PARTICIPATE IN COMMISSION DISCUSSIONS

Elected County Charter officers, the County Administrator, and such other County employees as may be designated by majority vote of the Commission, shall be entitled to appear before the Commission in all matters relating to their respective offices and departments.

SEC. 310 COMPENSATION – COMMISSION

(1) The salary of each member of the Board of County Commissioners shall be twelve thousand ($12,000) per year, and said salary shall constitute full compensation for all services and in-county expenses. Total out-of-county travel expenses, as provided by law, shall be limited to not more than fifteen percent (15%) of the total amount budgeted for Commissioners' salaries; provided, however, that all such out-of-county travel shall have been approved by the Board of County Commissioners prior to incurring the expense. The compensation of the Commissioners may

be changed from time to time by the affirmative vote of five (5) members of the Board of County Commissioners, by ordinance, to become effective on the first day of the first fiscal year following the next general election after the change in compensation has been adopted by the Commission, provided, however, such change in compensation must be approved by a majority of the voters at the said general election. No ordinance changing the compensation of the Board of County Commissioners shall be enacted prior to January 1, 1982.

(2) Commission members elected prior to the effective date of this Charter shall continue to receive the salary established by general law until November 19, 1980.

SEC. 311 RECORDING, PRINTING, AND CODIFICATION

The Commission shall provide for the authentication and recording in full, in properly indexed books kept for the purpose, of all minutes of Commission meeting, committee meetings, all ordinances, and all resolutions adopted by the Commission and the same shall, at all times, be a public record. The Commission shall further maintain a codification of all ordinances, and such codification shall be published and made available for distribution on a continuing basis at prices consistent with general law.

SEC. 312 POWERS AND DUTIES OF THE COMMISSION

To the extent not inconsistent with general law, or this Charter, the legislative responsibilities and powers of Escambia County, Florida shall be assigned to, and vested in, the Board of County Commissioners.

(1) The Board shall have the duty to:

(a) Prepare and enforce long-range comprehensive plans for governance of the County;

(b) Require that the operating budget for the succeeding fiscal year of every Elected County Charter Officer, every Department and every Agency receiving County funds be submitted annually or at such times as the Board may direct.

(c) Insure that all daily operations of the various divisions of County government are carried out by the respective departments or divisions on an equitable Countywide basis, under the general supervision of the County Administrator and through the proper administrative chain of command. Any and all requests, demands or complaints received by the Commissioners regarding County services or operations shall be forwarded by the County Administrator for appropriate action.

(d) Insure that a unified budget is adopted by the County as provided by general law and insure that no expenditures or contracts for expenditures in any fiscal year in excess of each fund's budgets are made; those members of the Board voting for and contracting for such amounts in excess of the budget, or to pay an illegal charge against the County, or to pay any claim against the County not authorized by law or County ordinance shall be liable for such sums and shall be subject to the sanctions, fines or criminal penalties as provided by general law.

(e) Act as the "public employer" in connection with any County employee, other than District School Board employees, for collective bargaining purposes.

(f) Require that public funds are used only for public purposes, and if any such funds should be, pursuant to proper authority, provided to non-profit private

entities or organizations, then such entities or organizations must have a clearly defined public purpose; some measure of control must be granted to and retained by the County, regular reports and accountings shall be provided to the County, and the funds so received must be applied for and inure to the benefit of the citizens of the County.

(g) Adopt, by ordinance, an appropriate non-discriminatory bidding procedure for all purchases and leases of goods and services by the County, waivable only for specified purposes, with reasonable and thorough guidelines for specifications and other conditions designed to promote efficient and economical County services and operations.

(h) Appoint a County Administrator.

(i) Support the Civil Service system as directed in Article X of this Charter.

(2) The Board of County Commissioners shall have the power to:

(a) Advise and consent to all appointments made by the County Administrator for which Board confirmation is specified.

(b) Adopt or enact, in accordance with the procedures provided by general law and this Charter, such ordinances and resolutions as the Board of County Commissioners deems necessary or proper for the best interests of the County and its inhabitants.

(c) Provide for the prosecution and defense of legal causes in behalf of the County or State and retain counsel and set their compensation.

(d) Provide and maintain County buildings for public purposes.

(e) Provide for fire and police protection, disaster preparation and relief, and civil defense.

(f) Provide for hospitals, nursing homes, ambulance service, and health and welfare programs.

(g) Provide for parks, preserves, playgrounds, libraries, museums, historical commissions, and other recreation and cultural facilities and programs.

(h) Establish, coordinate, and enforce such business regulations as necessary for the protection of the public.

(i) Adopt and enforce building, housing, and related technical codes and regulations.

(j) Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, water pollution control, and navigation and drainage, and cooperate with governmental agencies and private enterprises in the development and operation of such programs.

(k) Provide for and regulate waste and sewage collection and disposal, water supply, and conservation programs.

(l) Provide for and operate air, water, rail, and bus terminals, port facilities, and public transportation systems.

(m) Provide for and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities; eliminate grade crossings; provide and regulate parking facilities; and develop and enforce plans for the control of traffic and parking.

(n) License and regulate taxis, jitneys, limousines

for hire, rental cars, and other passenger vehicles for hire operating in the unincorporated areas of the County.

(o) Establish and enforce regulations for the sale of alcoholic beverages in the unincorporated areas of the County pursuant to general law.

(p) Enter into agreements with other governmental agencies within or outside the boundaries of the County for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions.

(q) Levy and collect taxes, to the extent permitted by general law, both for County purposes and for the providing of municipal services within any municipal service taxing unit; levy and collect special assessments; borrow and expend money, but only to the extent authorized under this Charter; issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such a manner, and subject to such limitations, as may be provided by the Constitution and the Laws of Florida and this Charter. The County shall not give, lend, use or apply its credit or taxing power to aid any person, association, partnership, corporation, or other private organization except as provided by general law; nor shall ad valorem tax revenues or the full faith and credit of the County be pledged or given to secure bonds, certificates of indebtedness, or other evidences of indebtedness, that mature more than twelve (12) months after issuance, without approval by vote of the electors of the County.

(r) Employ an independent accounting firm to audit the funds, accounts, and financial records of the County or any of its departments, agencies, and govern-

mental subdivisions. Not less that five (5) copies of each complete audit report, with accompanying documents, shall be filed with the County Comptroller and maintained there for public inspection.

(s) Adopt and amend, in accordance with Section 704 of this Charter, from time to time, the County's Administrative Code after reasonable public notice and hearings.

(t) Appoint a County Attorney, who shall be a qualified attorney admitted to practice law in Florida, and such assistants as may be required, and fix the compensation to be paid thereto. This compensation shall be limited to salary and, in the discretion of the Board, such other employee benefits as may be received by the other County employees.

(u) the Board of County Commissioners shall have the full power to create, alter or abolish Special Districts and Municipal Service Units to the full extent granted by the Constitution and the Laws of Florida.

(w) Perform any other acts not inconsistent with the Constitution and the Laws of Florida or with this Charter which are in the common interests of the people of the County, and exercise all powers and privileges not specifically prohibited by law.

SEC. 313 ELECTION, POWERS AND DUTIES OF THE CHAIRMAN AND CHAIRMAN PRO-TEM OF THE BOARD OF COUNTY COMMISSIONERS

(1) The Board of County Commissioners shall elect from among its members by majority vote a Chairman and a Chairman Pro-Tem. The Chairman and the Chairman Pro-Tem shall be elected prior to January 1 of each

year and shall take office at the first meeting in January of each year.

(2) The Chairman, in addition to the powers and duties provided elsewhere in this Charter, shall have the specific powers and duties to:

(a) Serve as the legislative leader and presiding officer of the Board of County Commissioners.

(b) Present annually a "State of the County" message, setting forth programs and recommendations to the people of Escambia County;

(c) Nominate, subject to confirmation by a majority vote of the Board of County Commissioners, members of all appointed County boards, commissions, and advisory groups;

(d) Call regular and special meetings of the Board of County Commissioners; and

(e) Serve as the official representative and ceremonial dignitary for the government of Escambia County.

(3) In the absence of the Chairman, the Chairman-Pro-Tem shall perform such duties above as are required.

SEC. 314 APPORTIONMENT AND REAPPORTIONMENT

The County shall be divided into five (5) districts of contiguous territory as nearly equal in population as practicable. In the first odd-numbered year after each decennial census, and at such other times as reapportionment may be required, the County's districts shall be reapportioned in accordance with general law in the following manner:

(1) A Reapportionment Commission shall be established to prepare the reapportionment plan for the County. The Commission shall consist of seven (7) electors, none of whom may be elected public or party officers or employees of the State or County. Prior to December 1 of each year ending in 0, and at such other times as reapportionment may be required, the Chairman of the Board of County Commissioners, the Chief Judge of the Circuit Court of the judicial circuit for the County, and the County Supervisor of Elections shall each nominate two (2) persons on the Commission, and these six (6) persons shall be confirmed and appointed as members of the Reapportionment Commission by the Board of County Commissioners at the Board's next regularly scheduled meeting. Within thirty (30) days after the Board has so acted, the six (6) Commissioners so appointed shall select by affirmative vote of at least four (4) Commissioners, a seventh (7th) Commissioner who shall serve as Chairman of the Commission. Failure to select the seventh (7th) Commissioner within the time prescribed shall constitute an impasse which shall automatically discharge the Commission, and a new Commission shall then be appointed in the same manner as the original Commission. Any subsequent vacancy on the Commission shall be filled by majority vote of the remaining members of the Reapportionment Commission.

(2) The Board of County Commissioners shall appropriate funds to enable the Commission to carry out its duties, and shall provide clerical assistance as needed.

(3) The Reapportionment Commission shall prepare a reapportionment plan that is equitable to all electors of the County. In preparing the plan, the Commission shall not consider the political affiliations of registered voters or previous election results for the purpose of favoring any

political party, incumbent elected official, or any other person or group, nor shall the Commission establish the district boundaries for purpose of diluting the voting strength of any language or racial minority group.

(4) The reapportionment plan as prepared by the Reapportionment Commission shall be presented to the Board of County Commissioners by November 1 of the first odd-numbered year after each decennial census, and at such other times as reapportionment may be required, and such plan shall be adopted in the manner prescribed by general law at least seven (7) months prior to the date of the first county election scheduled to be held thereunder. The reapportionment Commission shall act as advisor to the Board of County Commissioners until such time as the plan has been adopted at which time it shall be deemed discharged.

(5) If the method of electing County Commissioners set forth in Section 301 of this Charter should be judicially declared unlawful, the Board of County Commissioners, after exhausting all reasonable means of upholding and defending the Charter, shall adopt, by ordinance, a remedial plan for electing the County Commissioners, with the district boundaries to be fixed by the Reapportionment Commission in accordance with this section.

ARTICLE IV
ADMINISTRATIVE BRANCH – COUNTY MANAGEMENT

SEC. 401 COUNTY ADMINISTRATOR

There shall be a County Administrator for Escambia County.

SEC. 401.1 APPOINTMENT, REMOVAL AND SALARY

The Board of County Commissioners shall appoint a County Administrator who shall be the administrative head of the County government and shall be responsible for the efficient administration of all County departments. He may be the head of a department or departments as the Board of County Commissioners may, by resolution, provide. Appointment to the position of County Administrator shall be made only after applicants for the position have been solicited on a national basis with appropriate advertising over a reasonable period of time. He shall be chosen on the basis of his experience, education, executive ability and administrative qualifications. He may or may not be a resident of the County or the State of Florida at the time of his appointment; provided, however, he shall within sixty (60) days after appointment establish residence within Escambia County. The County Administrator shall be appointed by the affirmative vote of not less than five (5) members of the Board of County Commissioners. He may be removed upon reasonable notice and after a hearing, if such is requested, at any time by an affirmative vote of four (4) or more members of the Board of County Commissioners. He shall receive such salary as may be fixed by the Board of County Commissioners. His compensation shall be limited to the salary and, at the discretion of the Board of County Commissioners, such other employee benefits as may be received by other County employees. In the event of his removal without cause he may be granted not more than three (3) months' termination pay.

SEC. 401.2 POWERS AND DUTIES OF THE COUNTY ADMINISTRATOR

(1) The County Administrator shall be the Chief Administrative Officer of the County, and he shall be responsible to the Board of County Commissioners as a whole for the proper administration of the affairs of the County, except as otherwise provided by the Constitution and the Laws of Florida, or by this Charter. He shall also serve as the County's budget officer.

(2) It is the intent of this Charter to grant to the County Administrator only those powers and duties which are administrative or ministerial in nature, and not to delegate any governmental power vested in the Board of County Commissioners as the governing body of Escambia County, Florida. To that end, the specifically enumerated powers below are to be construed as administrative in nature, and in any exercise of the governmental power, the Administrator shall only be performing the duty of advising the Board of County Commissioners in its role as the policy-setting governing body of the County.

(3) The powers and duties of the County Administrator shall include the following:

(a) Administer and carry out the directives and policies of the Board of County Commissioners and enforce all orders, resolutions, ordinances, and regulations of the Board, the County Charter, and all applicable law, to assure that they are faithfully executed.

(b) Report to the Board of County Commissioners on action taken pursuant to any directive or policy of the board.

(c) Provide the Board of County Commissioners,

or individual members thereof, upon request, with data or information concerning County government.

(d) Prepare and submit a tentative budget for the ensuing fiscal year to the Board of County Commissioners on or before July 15th of each year.

(e) Establish the schedules and procedures to be followed by all County departments, offices, and agencies in connection with the budget, and supervise and administer all phases of the budgetary process except pre-audit and post-audit requirements.

(f) Prepare and submit to the Board of County Commissioners after the end of each fiscal year a complete report on the finances and administrative activities of the County for the proceeding year and submit recommendations in connection therewith.

(g) Coordinate the care and custody of all County property, institutions, and agencies.

(h) Organize the work of County departments, subject to the County's Administrative Code, and review the departments, administration, and operation of the County and make recommendations pertaining thereto.

(i) Appoint, subject to the approval of the Board of County Commissioners, all department heads, who shall serve at the pleasure of the County Administrator, and employ, suspend, or discharge such personnel as may be necessary to administer and perform the County's functions and services, pursuant to appropriation, the Administrative Code, and any applicable civil service procedures. Except as otherwise provided in this Charter, department heads shall not be subject to civil service procedures, and may be suspended or discharged without Commission approval.

(j) Develop long-range fiscal plans for the County in coordination with the Elected County Charter Officers, and present such plans annually, updated as necessary, to the Commission for its review and adoption.

(k) Negotiate leases, contracts, and other agreements, including consultant services, for the County, subject to approval by the Board, and make recommendations concerning the nature and location of County improvements.

(l) See that all terms and conditions in all leases, contracts, and agreements are performed and notify the Board of any noted violation thereof.

(m) Order any department, division, or agency under his jurisdiction as specified in the Administrative Code to undertake any task for any other department, division or agency on a temporary basis if he deems it necessary for the proper and efficient administration of the County government.

(n) Designate a person to act during his absence.

(o) Attend all meetings of the Board with the authority to participate in the discussion of any matter. In coordination with the appropriate Elected County Charter Officers and department heads, review, analyze, and forecast trends of the County services, finances, and programs, and keep the Board informed of the results thereof.

(p) Perform such other duties as may be required of him by the Board of County Commissioners.

SEC. 401.3 VACANCY

The Office of the County Administrator shall be

declared vacant in the event of the incumbent's termination, resignation, death, moving his residence from the county, or if he is, by unexplained absence, illness or other disability, unable to continue in office or perform the duties of his office. A vacancy in the office shall be filled, within six (6) months from the time the vacancy occurs, in the same manner as the original appointment. The Board of County Commissioners may appoint an Acting Administrator in the case of vacancy until such time as a successor has been appointed and qualified or the Administrator returns.

SEC. 402 NONINTERFERENCE BY COUNTY COMMISSION

The Commission and its members shall deal with that portion of the County government for which the Administrator is responsible solely through the Administrator, and neither the Commission nor any member thereof shall interfere with the performance of any County employee under the direct or indirect supervison of the County Administrator.

ARTICLE V
JUDICIAL SYSTEM

SEC. 501 COURTS

The judicial branch of the Charter Government shall be provided by the Constitution and Laws of Florida and this Charter.

ARTICLE VI
ELECTED COUNTY CHARTER OFFICERS

SEC. 601 ELECTED COUNTY CHARTER OFFICERS

There shall be six Elected County Charter Officers: the Clerk of the Circuit Court; the Comptroller; the Property Appraiser; the Sheriff; the Supervisor of Elections; and the Tax Collector. Except as provided herein, all County Constitutional Officers shall become Charter officers as of the effective date of this Charter, and the previously existing offices of like names shall thereupon be discontinued. Each of these officers shall have the powers, duties and responsibilities as are herinafter specified, and each shall be a Charter officer and not a Constitutional officer. The budget and financial funding of each officer shall be subject to and in accordance with the unified budget as adopted by the Board of County Commissioners under this Charter.

SEC. 601.1 CLERK OF THE CIRCUIT COURT

The office of the Clerk of the Circuit Court, as provided by Chapter 28, Florida Statutes (1977) and general law shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. His duties shall include, without limitation, those specified for the Clerk of the Circuit and County Courts in Chapter 73-455, Laws of Florida. The Clerk of the Circuit Court shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

SEC. 601.2 COMPTROLLER

The office of Comptroller, as provided by Chapter 28,

Florida Statutes (1977) and general law for those counties having a Comptroller, shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. His duties shall include, without limitation, those specified for the Comptroller in Chapter 73-455, Laws of Florida. The Comptroller shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

SEC. 601.3 PROPERTY APPRAISER

The office of Property Appraiser as provided by general law shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. The Property Appraiser shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

SEC. 601.4 SHERIFF

The office of Sheriff as provided by Chapter 30, Florida Statute (1977) and general law, shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. The Sheriff shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

SEC. 601.5 SUPERVISOR OF ELECTIONS

The office of Supervisor of Elections as provided by general law shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and ef-

fect. The Supervisor of Elections shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

SEC. 601.6 TAX COLLECTOR

The office of Tax Collector as provided by general law shall continue as County Charter Officer, and to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. The Tax Collector shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

SEC. 602 SALARIES

Salaries of the six above Elected County Charter Officers shall be as provided by general law for the comparable office.

ARTICLE VII
ADMINISTRATIVE DEPARTMENTS OF THE GOVERNMENT

SEC. 701 DEPARTMENTS

There shall be not more than five (5) County departments under the Charter Government.

SEC. 702 DEPARTMENT HEADS

Each department head shall be the principal officer of the department and responsible for all its operations, and shall be appointed by the County Administrator subject to confirmation by the Commission and shall serve at the pleasure of the County Administrator. The Board of County Commissioners shall establish a salary range for

department heads; the exact salary of any department head shall be established within that range by the County Administrator.

SEC. 703 CHANGES IN DEPARTMENTS

Changes in the number of departments established in this Article shall be made only by amendment to this Charter. Upon the recommendation of the County Administrator, the Board of County Commissioners may by ordinance make changes within departmental organizations including combinations, deletions and transfer of responsibilities among departments.

SEC. 704 ADMINISTRATIVE CODE

(1) The rules, regulations, and administrative organization for all departments, divisions, agencies, and offices of Elected County Charter Officers of the county government shall be set forth in an Administrative Code. The said Code shall be published and made available to the public at cost, and shall be revised as necessary to reflect changes and remain current. Each department head, agency head, or Elected Charter Officer shall be responsible for his respective portion of the Administrative Code. Adoption and incorporation into the Administrative Code shall be required before rules and regulations shall become effective.

(2) The County Administrator shall be responsible for the preparation and submission to the Board of County Commissioners for adoption of all the Administrative Code material from all departments, divisions, boards, and agencies of the county within his jurisdiction. Each Elected County Charter Officer and each head of a county agency or board (other than agencies or boards within the County Administrator's jurisdiction) shall be responsible

for the preparation of his respective Administrative Code material, and the same shall be submitted to the Board of County Commissioners for incorporation into the Administrative Code. Amendments, deletions, or additions to the said Code may be made from time to time after such notice and public hearing as may be required under general law, as follows:

(a) By the Board of County Commissioners as to material submitted by the County Administrator; and

(b) By the respective Elected County Charter Officers or heads of agencies and boards as to material not required to be submitted through the County Administrator.

(3) The Board of County Commissioners, Elected County Charter Officers, and any applicable agency or board heads are empowered to, and shall, develop, adopt, and promulgate the procedures necessary to accomplish the foregoing in a manner that will afford the public a reasonable opportunity to advocate or oppose rules, regulations, or administrative organization.

(4) The initial Administrative Code under this Charter shall be promulgated within twelve (12) months after the effective date of the Charter.

(5) It shall be the responsibility of the County Administrator to insure that the Administrative Code is compiled, adopted, published, and revised in accordance with this section.

ARTICLE VII
ADMINISTRATIVE, REGULATORY AND ADVISORY BOARDS

SEC. 801 BOARDS

The Board of County Commissioners may create by ordinance, specifying the duties and membership thereof, such administrative, regulatory and advisory boards as it finds necessary and may also, by ordinance, abolish or alter such boards so created. Members of these boards shall serve without compensation, except for expenses as provided by general law and as approved by the Board of County Commissioners.

SEC. 802 SANTA ROSA ISLAND AUTHORITY

(1) The Santa Rosa Island Authority and its functions, responsibilities, duties, and obligations as provided for in Chapter 24-500, Laws of Florida, (1947) as amended shall continue to exist, except as provided herein for the appointment of members.

(2) The Santa Rosa Island Authority shall consist of five (5) members appointed by the County Commission. All members shall be electors of the County and at least one (1) member shall be a leaseholder of Santa Rosa Island property. Members shall be appointed for five (5) year terms, so staggered as to provide for one term to expire each year. Terms of initial appointees shall be determined by lot.

SEC. 803 BOARD OF TRUSTEES OF CENTURY MEMORIAL HOSPITAL

The Board of Trustees of Century Memorial Hospital and its functions, responsibilities, duties, and obligations

as provided in Chapter 77-553 Laws of Florida shall continue to exist.

ARTICLE IX
ELECTIONS

SEC. 901 ELECTION PROCEDURES

Except as otherwise provided in this Charter, elections of County Commission members and Elected County Charter Officers shall be in accordance with general law.

SEC. 902 COMMENCEMENT OF TERMS

All officers elected under this Charter shall begin their terms of office on the Tuesday two (2) weeks following the day of the General election.

SEC. 903 NON-PARTISAN ELECTIONS

(This section shall be included only if the voters approve Non-Partisan elections.)

(1) Elections for all Charter offices shall be on a non-partisan basis. No candidates shall be required to pay any political party assessment or be required to state the political party of which they are a member. All candidates' names shall be placed on the ballot without reference to political party affiliation.

(2) In the event that more than two (2) candidates have qualified for any single seat under Charter government, a primary election shall be held at the time of the first state primary election prior to the general election and providing that no candidate receives a majority of the votes cast, the two (2) candidates receiving the highest vote shall be placed on the ballot for election at the time of the general election.

(3) Each candidate for a Charter office shall be required to pay a filing fee in the amount of three (3) percent of the annual salary of the office. Such filing fees shall accrue to the County.

(4) Candidates qualifying by petition in accordance with general law shall be exempt from paragraph (3) above.

ARTICLE X
PERSONNEL ADMINISTRATION

SEC. 1001 PURPOSE

The purpose of this article is to provide a modern and comprehensive system of personnel administration based on merit principles and methods which promote efficiency and economy in the personnel services rendered, and fairness and equity to the employees and taxpayers of the county. The system shall provide means to recruit, select, develop and maintain an effective and responsive work force.

SEC. 1002 MERIT SYSTEM

The merit system for the employees of the County and the District School Board shall be continued.

SEC. 1003 NON DISCRIMINATION POLICY

No career Civil Service employee or applicant for employment shall be favored or discriminated against in any aspect of personnel administration because of religious or political opinions or affiliations, race, national origin, sex, age or physical disability except where sex, age or physical ability constitute a bona fide occupational qualification. Any applicant or employee who has reason to believe that he or she has been discriminated

against in any personnel action may appeal to the Civil Service and Personnel Board.

SEC. 1004 UNCLASSIFIED AND CLASSIFIED SERVICE

The personnel system of the Charter Government shall provide for the employment of qualified personnel and shall include all necessary provisions to insure protection of both employee and employer. This system shall have two basic divisions, the classified or career service and the unclassified or exempt service.

SEC. 1004.1 CLASSIFIED OR CAREER SERVICE

The classified or career service shall include all employees of Escambia County and the District School Board who are not in exempt positions as provided in this Charter and who are covered by the merit system.

SEC. 1004.2 UNCLASSIFIED OR EXEMPT POSITIONS

The Civil Service and Personnel Board shall maintain a list of all exempt positions along with the documentation of the applicable positions for exemption. Exempt positions shall include:

(1) All elected officials, persons appointed by the Governor, the County Administrator and department heads appointed by the County Administrator.

(2) Members of boards, advisory councils and committees that serve without pay.

(3) Instructional and administrative personnel of the District School Board as defined in Section 228.041 (9) and Section 228.041 (10), Florida Statutes as they now read or may be hereafter amended.

(4) Other officials and employees of the Board of County Commissioners and the District School Board whose positions are exempt at the time of Charter adoption may be continued in an exempt status as provided below.

(a) Two (2) years after Charter adoption and every two years thereafter, existing exempt positions shall be reviewed and may be approved by the Civil Service and Personnel Board. At this time any requests for additional exempt positions shall also be considered. All requests shall be supported by adequate documentation describing the duties, responsibilities and qualifications of the position and must be in accord with budgetary limitations.

(5) The Civil Service and Personnel Board shall establish guidelines and criteria for the establishment of exempt positions, except those named in sections (1), (2), and (3) above.

(6) Public notice shall be given in a daily newspaper of general circulation in Escambia County, between seven (7) and fifteen (15) days prior to any meeting of the Civil Service and Personnel Board at which additional exempt positions will be considered.

SEC. 1005 STATUS OF EMPLOYEES

(1) Career Service

The status of all classified employees shall be fully protected upon the adoption of this Charter according to the provisions of S. 125.88, Florida Statutes. All officers and employees in the classified service of the County shall be transferred to the appropriate department, division or agency under the Charter. Such transfers shall be without examination or reduction of existing compensation, pension, or retirement rights.

(2) Exempt Employees

Employees of the County and District School Board who are unclassified and hold their positions by appointment shall be continued under Charter if they are appointed under proper authority subject to the provisions of this Charter. An exempt or unclassified employee shall not be placed in a classified position until said employee has made application for, fulfilled the requirements of, and been examined for the position sought, and has been placed on the roster by the same procedure followed by other applicants. The Board shall, by rule, grant point preference to such former employees as established for former classified employees.

SEC. 1006 CIVIL SERVICE AND PERSONNEL BOARD

(1) The Civil Service and Personnel Board shall be composed of seven (7) members. One member shall be elected by each of the following groups prior to February 15th:

February 15th:

(a) Board of County Commissioners

(b) District School Board

(c) Classified employees of the County

(d) Classified employees of the District School Board

(e) Elected Charter Officers; (The Sheriff, the Clerk of the Circuit Court, the Comptroller, the Property Appraiser, the Supervisor of Elections, and the Tax Collector).

Two (2) members shall be public members elected by the first five (5) members. The affirmative vote of four (4) of

the first five (5) members shall be required to elect the two (2) public members.

(2) In the event the five (5) members cannot agree upon the sixth (6th) and seventh (7th) members within thirty (30) days after taking office, the Chief Judge of the Circuit Court shall designate such members.

(3) The Civil Service and Personnel Board shall by February 1st establish appropriate procedures for the election of Board members by the classified employees of both the County and the District School Board.

SEC. 1006.1 TRANSITION

The members of the Civil Service and Personnel Board prior to the effective date of this Charter shall remain in office until March 1st following the effective date of this Charter, at which time the Board members elected under the provisions of this Charter shall take office in the manner prescribed as follows. Initially, the Board of County Commissioners shall elect one (1) member for a two (2) year term, the District School Board shall elect one (1) member for a two (2) year term, and the Elected County Charter Officers, as a group, shall elect one (1) member for a two (2) year term. The Classified employees of the County shall elect one (1) member for a two (2) year term, and the Elected County Charter Officers, as a group shall elect one (1) member for a four (4) year term and the classified employees of the District School Board shall elect one (1) member for a four (4) year term. The sixth (6th) (public) member and the seventh (7th) (public) member shall be elected for four (4) year terms. Following the initial terms, the terms of all members shall be for four (4) years.

SEC. 1006.2 TERMS OF OFFICE

Members of the Civil Service and Personnel Board shall serve staggered four (4) year terms. A member of the Civil Service and Personnel Board shall not be removed from office except by the Governor of the State, as provided for in the general law and the Constitution of the State of Florida. Any vacancy on the Board shall be filled within thirty (30) days in the manner by which the vacated member was elected.

SEC. 1006.3 QUALIFICATIONS

Members of the Civil Service and Personnel Board shall be qualified electors of the County and shall be persons in sympathy with the application of merit principles to public employment. No member of the Civil Service and Personnel Board shall be employed in any capacity by any agency covered by the Escambia County personnel system; nor shall any member hold or be a candidate for any paid public office or employment or be a member of any local, state or national committee of a political party or an officer in any partisan political club or organization. The Standards established in Section 1202.1 of this Charter shall apply to members of the Civil Service and Personnel Board.

SEC. 1006.4 OFFICERS AND MEETINGS

The Civil Service and Personnel Board shall elect one of its members as a Chairman and another as Vice Chairman; and shall meet at least once a month at such time and place as shall be specified by call of the Chairman. Advance notice of all meetings shall be provided to each member, and to the news media, either orally or in writing. Except in unusual circumstances, the regular monthly meetings shall be at an established time and place. All meetings shall

be open to the public. Four (4) members of the Civil Service and Personnel Board shall constitute a quorum for the transaction of business unless the action requires the affirmative vote of five (5) members as provided by this article.

SEC. 1006.5 REMUNERATION

The members of the Civil Service and Personnel Board shall not receive salary but shall be reimbursed for expenses in a manner to be determined by resolution of the Board of County Commissioners.

SEC. 1006.6 POWERS AND DUTIES OF THE BOARD

The powers and duties of the Civil Service and Personnel Board shall be as follows:

(1) To establish Rules and Regulations for the administration of this article. The Rules and Regulations shall be published with the Administrative Code.

(2) To make investigations concerning the enforcement of this Article.

(a) To conduct hearings, administer oaths, take depositions, issue subpoenas, compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

(b) In case of disobedience by any person to comply with an order or subpoena issued by the Board, or the refusal of a witness to testify in lawful interrogation, the Board shall make application to a judge of the Circuit Court of Escambia County, Florida to compel obedience.

(3) To punish by suspension or dismissal any classified employee found, after due notice and hearing, guilty of any violation of this Article or the Rules and Regulations of the Board.

(a) Appeals from Board action shall be by certiorari to the Circuit Court of Escambia County, Florida.

(4) To review, at its discretion, any investigation by an employer concerning misconduct by an employee and to determine whether or not a violation has occurred. The Board shall have the power to approve, modify or set aside any disciplinary action taken or recommended by an employer against a classified employee.

(5) To hear and determine appeals or complaints respecting the administration of this Article.

(6) To ascertain, develop and record the qualifications, duties and responsibilities pertaining to all classified positions of the merit system.

(a) Each appointing authority shall ascertain, record the qualifications, duties, responsibilities and salary range of all unclassified positions and shall file same with the Civil Service and Personnel Board.

(7) To prepare and conduct competitive tests to determine qualifications of persons who seek employment in any classified position and to establish employment lists for the various classes of positions.

(8) To establish a system of performance rating to be used in determining promotions, the order of layoffs and reemployment, and for other purposes.

(9) To keep necessary records for the proper administration of the personnel system and make a status report concerning all employees of the County, both classified and exempt, to the people and officials of Escambia County on July 1 of each year.

(10) To employ necessary staff to carry out this Article.

(11) to retain legal counsel.

(12) By the affirmative vote of five (5) members of the Board, to amend, repeal, or add to the provisions of House Bill 947 as enacted by the 1979 Legislature (which special act and all amendments thereto are expressly incorporated herein to the extent not inconsistent with this Charter), by rule or regulation adopted and promulgated as a part of the Administrative Code to such extent as may be consistent with the Article.

(13) In addition to the above, the Civil Service and Personnel Board shall have all powers and duties as provided in general law and existing local law, except where such laws are inconsistent with this Charter.

SEC. 1006.7 PAY PLAN FOR CLASSIFIED EMPLOYEES

(1) The Civil Service and Personnel Board shall complete a comprehensive classification and wage survey every three (3) years and shall make annual studies to determine the adequacy and fairness of the pay plan.

(2) Prior to June 1st of each year the Civil Service and Personnel Board shall recommend the pay scales, wages and salaries, for all classified employees to the Board of County Commissioners and to the District School Board. As the appropriating authorities, the Board of County Commissioners shall make the final determination in approving annual wages for all employees of the County, and the District School Board shall make the final determination in approving annual wages for classified employees of the District School Board.

(3) The Civil Service and Personnel Board shall prescribe in its Rules and Regulations standard policies

governing the administration of the pay plan and other elements of compensation.

(4) All appointing authorities shall furnish a copy of each payroll, both classified and unclassified, to the Civil Service and Personnel Board immediately following the pay period. The Board shall give written notice to the appropriate employer of any item which appears to be in conflict with this Article or the Rules and Regulations of the Board. Any payment made on any item so noticed after receipt of said notice shall be considered improper expenditure of public funds.

(5) The existing pay plan at the time of Charter adoption shall remain in effect until amended as herein provided.

SEC. 1007 PERSONNEL DIRECTOR

SEC. 1007.1 QUALIFICATIONS

The personnel director shall be a member of the classified service chosen by the Civil Service and Personnel Board on the basis of professional education, training and experience in personnel administration.

SEC. 1007.2 DUTIES

The personnel director shall direct the staff of the Board and be responsible to the Board for the administration of the personnel system in accordance with this Charter and as provided in the Rules and Regulations of the Board.

SEC. 1008 FINAL AUTHORITY

The determination of the Civil Service and Personnel Board shall be final as to whether offices and positions are under classified service, subject only to judicial review.

SEC. 1009 PERSONNEL REVIEW

Classified employees covered by the merit system shall be entitled to request a review by the Board of any action taken pertaining to his or her employment or employment rights established under the Rules and Regulations of the Board. The right of appeal from any disciplinary action, transfer, demotion or discharge applies exclusively to members of the classified service.

SEC. 1010 SUPPORT OF THE PERSONNEL SYSTEM

(1) The Board of County Commissioners shall provide adequate and suitable office space and sufficient funds for the operation of an efficient civil service and personnel system.

(2) Each agency, appointing authority of the County government, and any other appointing authorities receiving services from the County Civil Service and Personnel System, shall reimburse the County on a pro-rata basis for the operating costs of the personnel system.

SEC. 1011 UNLAWFUL ACTS PROHIBITED

(1) No persons shall make any false statement, certificate, mark, rating or report with regard to any test, certification, or appointment made under any provision of this law or in any manner commit or attempt to commit any fraud preventing the impartial execution of this law and policies.

(2) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service or other vaulable consideration for any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the career service.

ARTICLE XI
FINANCE

SEC. 1101 FISCAL YEAR

The fiscal year of the County shall begin on October 1 of each year and shall end on September 30 of the following year.

SEC. 1102 GENERAL

The County and all County offices, departments, and agencies shall operate under a unified and uniform budget system. The County's annual budget and all budgetary processes shall be in accordance with general law except as otherwise provided in this Charter. All fees collected by officers and employees of the County shall be deposited promptly in the County Treasury. All officers and employers of the County shall be compensated by salaries, and no officer or employee of the County shall be compensated by fees, directly or indirectly, arising from or occassioned in any way as a result official duties.

SEC. 1103 BUDGETS

There shall be prepared, approved, adopted and executed for each fiscal year and for such additional periods as the Board of County Commissioners may deem advisable, a budget for such funds as may be required by law or by sound financial practices and generally accepted accounting principles. The budget shall be controlling for purposes of levying taxes and expending funds for all County purposes.

SEC. 1103.1 PREPARATION OF THE BUDGET

(1) It shall be the responsibility of the County Administrator to prepare and submit a tentative budget for

the ensuing fiscal year to the Board of County Commissioners. All information and data necessary for the preparation of the tentative budget shall be provided by the appropriate County officers or employees on or before June 1 of each year, including a tentative budget for each office, department, agency, or fund for which the respective officer or employee is responsible.

(2) The County Comptroller shall have the duty to study the proposed budget and appear before the Board of County Commissioners to offer any comments regarding the financial and/or legal soundness of the document.

SEC. 1103.2 REVIEW AND ADOPTION

(1) The Board of County Commissioners shall receive and examine the tentative budget submitted to them and shall examine the tentative budget for each office and each fund. Revisions in the tentative budget may be made in the Board's discretion, but priority shall be given to those areas of budgeted expenditures necessary for the performance of governmental duties and obligations imposed by general law or by this Charter.

(2) Upon the completion of any revisions made by the Board of County Commissioners, the Board shall prepare a statement summarizing all of the tentative budgets in the manner provided by general law. They shall cause this summary statement to be advertised one time in a newspaper of general circulation published in the County on or before September 1 of each year, and the advertisement shall state that the Board of County Commissioners shall meet on a day fixed in the advertisement, not earlier than one week and not later than two weeks from the date of the advertising, for the purpose of hearing requests and complaints from the public and from any affected County officer regarding the tentative budget of the County.

(3) The Board shall meet upon the date fixed in the advertisement and from day to day thereafter if necessary for the purpose of holding a public hearing and making whatever revisions in the budget it may deem necessary, and shall thereupon adopt the revised budget and file the same with the County Comptroller as a public record on or before October 1 of each year.

(4) Each Elected County Charter Officer shall have the right of budgetary appeal both as described elsewhere in this Article and by certiorari to the Circuit Court, but no such officer shall have the right to appeal to the Florida Department of Administration or to the Florida Department of Revenue, or any other state department, pursuant to Sections 30.49 and 195.087, Florida Statutes (1977), or any other provision of general law applicable to non-Charter officers. Petitions for certiorari to the Circuit Court must be filed within ten (10) days from the date of the final adoption of the budget by the Board of County Commissioners.

SEC. 1103.3 IMPLEMENTATION AND AMENDMENT OF THE BUDGET

(1)The budget as finally adopted by the Board of County Commissioners shall regulate the expenditures of the County, and the itemized estimates of expenditures shall have the effect of fixed appropriations and shall not be amended or altered or exceeded except as provided by general law or under this Charter.

(2) Upon written approval of the County Administrator appropriations for expenditures in any department may be decreased and other appropriations in the same department correspondingly increased, provided that the total appropriation of the department shall not be changed.

(3) The Board of County Commissioners may, from time to time within a fiscal year, amend the budget for that year as follows:

(a) Appropriations from the reserve for contingencies may be made to increase the appropriation for any particular expense in the same fund or department, or to create an appropriation in the fund or department, for any lawful purpose, but no expenditures shall be charged directly to the reserve for contingencies.

(b) A receipt of a nature from a source not anticipated in the budget and received for a particular purpose, including but not limited to federal or state grants, other grants, donations, gifts, or reimbursements for damages, may by resolution of the Board spread on its minutes, with at least seven (7) days notice, be appropriated and expended for that purpose, in addition to the appropriations and expenditures provided for in the budget. Such receipts and appropriations shall be added to the budget of the proper fund or department.

(c) Increased receipts for enterprise or proprietary funds received for a particular purpose may, by resolution of the Board spread on its minutes, be appropriated and expended for that purpose, in addition to the appropriations and expenditures provided for in the budget.

(d) A receipt of a nature from a source not anticipated in the budget, and not received for a particular purpose, including but not limited to additional tax revenues, federal revenue funds, or state revenue sharing funds, may, by resolution of the Board spread on its minutes, after not less than seven (7) days notice, and after all receipts anticipated in the budget have been actually received, be appropriated and expended for such purposes and in such manner as may be lawful.

(e) In the event that the revenues actually received are less than anticipated and appropriated in the budget, the Board of County Commissioners may, upon the recommendation of the County Administrator, amend the budget to provide for appropriate recommendation of the County Administrator, amend the budget to provide for appropriate reductions in the general operations budget, each county Charter Officer's budget, and the other budgets incorporated in the County's unified budget, and in such event, shall publish a summary statement of the proposed amendment to the budget necessary to bring the budget into balance; and shall hold hearings for the purpose of such amendments in the manner required for the original adoption of the budget and to make such changes thereto as may be warranted.

(f) The seven (7) days notice requirement detailed in paragraphs (b) and (d) above may be waived by resolution of the Board of County Commissioners, on a case-by-case basis, if the satisfaction of that requirement would preclude receipt of such funds.

(4, Transfers may be made between funds to correct errors in handling receipts and disbursements or for budgeted transfers. Appropriations for expenditures in any fund may be decreased and other appropriations in the same fund correspondingly increased by motion recorded in the minutes, provided that the total of the appropriations of the fund be not changed.

SEC. 1104 BUDGET REVIEW BOARD

There shall be a Budget Review Board for the County, comprised of citizens of the County, which shall hear and review budget disputes, and advise the Board of County Commissioners regarding any budget disputes among the

parties described in Section 1104.3 in relation to the tentative budgets as promulgated under Section 1103.2 (2) of this Charter.

SEC. 1104.1 APPOINTMENT OF THE BUDGET REVIEW BOARD

The Budget Review Board shall consist of five (5) members appointed as follows:

(1) Prior to June 1 of each year the Board of County Commissioners shall appoint two (2) members and the Elected County Charter Officers, acting as a group, shall appoint two members.

(2) These four (4) members shall select the fifth (5th) member.

(3) In the event said four (4) members cannot agree upon the fifth (5th) member within thirty (30) days after said members take office, the Chief Judge of the Circuit Court serving Escambia County shall designate the fifth member.

SEC. 1104.2 QUALIFICATIONS OF MEMBERS

Members of the Budget Review Board shall be qualified electors of the County. No member of the Budget Review Board shall be employed in any capacity by any agency receiving funds from Escambia County; nor shall any member hold or be a candidate for any paid public office or employment or be a member of any local, state or national committee of a political party or an officer in any partisan political club or organization.

SEC. 1104.3 DELIBERATIONS OF THE BUDGET REVIEW BOARD

The Budget Review Board shall meet as necessary to consider the budgetary disputes and render its opinion

thereon prior to the scheduled public budget hearings. Each affected Elected County Charter Officer and the Civil Service and Personnel Board shall have the right to appeal to the Budget Review Board, and the right to appear before the Board and present relevant evidence. Appeals to the Budget Review Board shall be in writing and shall be filed with the County Administrator not less than three (3) days prior to the scheduled public budget hearings. The opinions and recommendations of the Budget Review Board regarding any budgetary dispute shall be presented to the Board of County Commissioners in writing, but shall be considered as advisory only. In the event of judicial review by certiorari, however, such written opinions and recommendations shall be admiss ble as evidence.

SEC. 1104.3 DELIBERATIONS OF THE BUDGET REVIEW BOARD

The Budget Review Board shall meet as necessary to consider the budgetary disputes and render its opinion thereon prior to the scheduled public budget hearings. Each affected Elected County Charter Officer and the Civil Service and Personnel Board shall have the right to appeal to the Budget Review Board, and the right to appear before the Board and present relevant evidence. Appeals to the Budget Review Board shall be in writing and shall be filed with the County Administrator not less than three (3) days prior to the scheduled public budget hearings. The opinions and recommendations of the Budget Review Board regarding any budgetary dispute shall be presented to the Board of County Commissioners in writing, but shall be considered as advisory only. In the event of judicial review by certiorari, however, such written opinions and recommendations shall be admissable as evidence.

SEC. 1104.4 SUPPORT

The Board of County Commissioners shall provide a suitable meeting room, secretarial assistance, and such other support as may be necessary for the Budget Review Board to perform its duties.

SEC. 1105 BONDS

SEC. 1105.1 OUTSTANDING BONDS

All outstanding bonds issued by former governments including the Board of County Commissioners of Escambia County and all special districts or authorities abolished or altered by this Charter are obligations of the County government; however, payment of such obligations and the interest thereon shall be made solely from and charged solely against funds derived from the same sources from which such payment would have been made had this Charter not become effective.

SEC. 1105.2 AUTHORITY TO ISSUE

The County shall have the authority to issue any bonds, certificate of indebtedness or any form of tax anticipation certificates authorized by the Constitution, general law, and this Charter.

SEC. 1105.3 SALE OF BONDS

All bonds issued by the Couunty shall be duly advertised and shall be sold in the manner which produces the lowest net interest cost for such bonds, calculated as the Commission may prescribe.

SEC. 1105.4 ADMINISTRATION

The County shall have the necessary authority to administer the collection of funds and the payments of amounts due on any bonds.

ARTICLE XII
CODE OF ETHICS

SEC. 1201 PURPOSE

It is essential to the proper conduct and operation of County government that public officials be independent and impartial, and that public office not be used for private gain other than the remuneration provided by law. The interest of the citizens of Escambia County, therefore, requires that this Charter protect against any conflict of interest and establish standards for the conduct of elected officials and County employees in situations where conflicts may exist.

SEC. 1202 APPLICATION OF THE CODE OF ETHICS

All elected County officials, and all County employees or agents shall be subject to the code of ethics for public officers and employees as provided in Part III of Chapter 112, Florida Statutes, as such chapter now exists or may hereafter be amended.

SEC. 1202.1 STANDARDS

(1) Conflict of Interest. No officer, employee, or agent of the County shall knowingly:

(a) Engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his of-

ficial duties or would tend to impair his independent judgment or action in the performance of his official duties;

(b) Engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his official duties or would tend to impair his independent judgment or action in the performance of his official duties;

(c) Disclose privileged information concerning the property, government, or affairs of the County, or any part thereof, without proper legal authorization, nor shall he use such information to advance the financial or other private interest of himself or others;

(d) Accept any valuable gift, whether tangible or intangible, from any person, firm, or entity which, to his knowledge, is interested directly or indirectly in any manner and to any extent in business dealings with the County government or a part thereof; provided, however, that any such officer, employee, or agent who may be a candidate for public office may accept campaign contributions and services in connection therewith in accordance with general law;

(e) Represent private interests in any action or proceeding against or in any way involving the County.

(f) Vote or otherwise participate in the negotiation or the making of any contract with any business or entity in which he has a financial interest, whether directly or indirectly, and whether present or prospective.

(2) Disclosure. Any officer, employee, or agent of the County having any private financial interest, directly or indirectly, present or prospective, in any contract or mat-

ter pending before or within any department of the County shall disclose such private interest to the Board of County Commissioners. Any member of the Board of County Commissioners who has such a private financial interest in any matter pending before the Board shall disclose such private interest in public which shall be recorded in the minutes, and shall disqualify himself from participating in any decision or vote relating thereto. Any officer or employee of any independent agency of the County to which this Code of Ethics applies who shall have any private financial interests as aforesaid in any contract or matter pending before or within such independent agency shall disclose such private interest to the government body of such independent agency.

(3) Use of Public Property. No officer, employee, or agent of the County, or any agency or part thereof, shall use property owned by the County for personal benefit, convenience, or profit.

SEC. 1203 FINANCIAL DISCLOSURE

All elected County officials and the County Administrator, all County department heads, the County Attorney, and the administrators or directors of each County independent agency, institution, or facility employing more than five (5) employees shall be subject to the financial disclosure provisions of Section 112.3145, Florida Statutes (1977) as such section now exists or may hereafter be amended.

SEC. 1204 PENALTIES

Penalties for the violation of either the code of ethics or the financial disclosure requirements as provided in this article shall be in accordance with the general law of the State of Florida.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

SEC. 1301 EFFECTIVE DATE

This Charter shall become law when approved by a majority of those voting in a special election to be held in the County under the provisions of the Constitution and Laws of Florida. If so approved the effective date of this Charter shall be January 1, 1980.

SEC. 1302 AMENDMENT

This Charter shall be amended only by referendum election. Amendments may be proposed by one (1) of three (3) methods described in this Section. Each proposed amendment shall embrace but one subject and matter properly connected there-with.

SEC. 1302.1 AMENDMENT BY BOARD OF COUNTY COMMISSIONERS

The Commission by a vote of five (5) members shall have the authority to propose amendments to this Charter. However, they may not exercise such power within one (1) year of the effective date of this Charter.

SEC. 1302.2 AMENDMENT BY PETITION

Amendments to this Charter may be proposed by a petition signed by a number of registered voters equivalent to

five (5) percent of the number of voters registered for the last general election. Any such petition shall be filed with the Board of County Commissioners and shall be validated or invalidated by the Supervisor of Elections.

SEC. 1302.3 CHARTER REVIEW COMMISSION

The Board of County Commissioners shall appoint, within five (5) years from the effective date of this Charter and at least every ten (10) years thereafter, a Charter Review Commission of eleven (11) members whose duty it shall be to review the Charter. The Charter Review Commission shall be organized and shall function in the manner set forth in Sections 125.61 (2) and 125.62 Florida Statutes, (1977). Within one (1) year of its initial meeting the Charter Review Commission shall present to the Board of County Commissioners its proposed amendments, if any, to the Charter. The Board of County Commissioners shall then comply with the provisions of Section 1303 of this Charter. Upon completion of their report, the Charter Review Commission will be dissolved.

(1) Any amendment proposed in accordance with this Article shall be subject to referendum. Notice of said referendum, together with the exact language of the proposed amendment, shall be published twice in a newspaper of general circulation in the County not more than forty-five (45) days nor less than thirty (30) days prior to the referendum election, and another notice shall be likewise published not more than ten (10) days nor less than five (5) days prior to the referendum election. Proposed amendments shall be placed on the ballot as received, without revision. Passage of proposed amendments shall require approval of a majority of electors voting in said election.

(2) All proposed amendments must be presented by the

County Commission to the electorate at the next general or special election unless submitted within sixty (60) days of said election; or, the County Commission, by an affirmative vote of five (5) Commissioners, may call a special election to present proposed amendments to the electorate.

SEC. 1304 EFFECT ON LOCAL LAWS

All existing ordinances, regulations and resolutions of the County shall remain operative except where inconsistent or indirect conflict with this Charter or until amended or repealed by the Board of County Commissioners.

SEC. 1305 CONFLICT OF COUNTY ORDINANCES WITH MUNICIPAL ORDINANCES

Notwithstanding any other provisions of this Charter, any County ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

SEC. 1306 POLITICAL ACTIVITY

All officers and employees of the Charter Government shall retain the right to hold membership in, and support, a political party, to vote as they choose, to express privately their opinions on all political subjects and candidates, to maintain political neutrality, and to attend political meetings.

However,

(1) No employee of the County shall hold, or be a candidate for, public or political office.

(2) No officer or employee of the County or member of the Civil Service and Personnel Board shall solicit any assessments, contributions, or services, for any political party or candidate from any employee of the County.

(3) No employee of the County or member of the Civil Service and Personnel Board shall take an active part in any political campaign on county property or during his duty hours.

(4) No leave of absence shall be granted to any person for the purpose of participating in any political campaign.

SEC. 1307 SEVERABILITY

If any part of this Charter is held unconstitutional, the remainder thereof shall remain in full force and effect.

SEC. 1308 INELIGIBILITY FOR APPOINTMENT

No elected County official or member of the Civil Service and Personnel Board during the term for which he has been elected or appointed, or for one (1) year thereafter, shall be eligible for appointment to any office, position or employment in the Charter Government which carries compensation.

Any elected official of this Charter Government may be recalled and removed from office by petition and recall election in accordance with the procedures established in Section 100.361, Florida Statutes (1977).

SEC. 1310 DISTRICT SCHOOL SYSTEM – RELATION TO CHARTER GOVERNMENT

The functions now performed by the Civil Service and Personnel Board, the Property Appraisor, the Tax Collector and any other departments or agencies of the County for the District School Board or its employees shall, where not inconsistent with this Charter, continue to be performed under this Charter.

SEC. 1311 VACANCIES

A vacancy in the office of any elected County official shall occur upon the death of the incumbent, his removal from office, resignation, succession to another office, unexplained absence for sixty (60) consecutive days, failure to maintain the residency required, or upon failure of one elected or appointed to the office to qualify within thirty (30) days from the commencement of the term of office or appointment. Vacancies shall be filled in accordance with the Constitution and Laws of Florida.

SEC. 1312 SUSPENSIONS

Suspensions from office of any County elected official shall be for cause and shall be in accordance with the Constitution and Laws of Florida.

SEC. 1313 SPECIAL ACTS

The functions, responsibilities, duties and obligations under or pursuant to all Special Acts not mentioned in this Charter relating to Escambia County, Florida, that are regulated or governed by the Board of County Commissioners and/or their funding source is the Commission are hereby transferred to and vested in the Charter Government. Except as provided in Section 1006.2 (12) above, all existing Special Acts incorporated by reference elsewhere in this Charter and Special Acts affecting the duties and terms of office of Elected Charter Officers may be amended or repealed only by amendment to this Charter. Other Special Acts vested in the Charter Government by this section may be amended or repealed by ordinance enacted by the Board of County Commissioners. No Special Acts subsequently enacted shall affect the Charter Government without the specific approval of the voters.

ARTICLE XIV
TRANSITION PROVISIONS

SEC. 1401 REFERENDUM AND BALLOT

Election on this Charter shall be held in accordance with the requirements of the Constitution and Laws of Florida. The question on the ballot shall be as follows:

> SHALL THERE BE A HOME RULE CHARTER FOR ESCAMBIA COUNTY, FLORIDA, PROVIDING FOR THE RESTRUCTURING OF COUNTY GOVERNMENT, WHICH SHALL TAKE EFFECT JANUARY 1, 1980, AS PROPOSED BY CHARTER DATED JUNE 18, 1979.

FOR HOME RULE CHARTER: _____

AGAINST HOME RULE CHARTER: _____

SEC. 1402 ADDITIONAL REFERENDUM QUESTION:

An additional question shall be provided on the referendum ballot to read as follows:

> SHALL THIS HOME RULE CHARTER PROVIDE FOR NON-PARTISAN ELECTIONS OF ALL COUNTY OFFICIALS?

FOR NON-PARTISAN ELECTIONS: _____

AGAINST NON-PARTISAN ELECTIONS: _____

SEC. 1403 OFFICES AND OFFICERS OF FORMER GOVERNMENT

Unless otherwise provided by this Charter all offices, officials, boards, commissions and agencies of the former government shall continue to perform their respective duties and functions until their respective successors have been elected or appointed and take office.

SEC. 1404 PROCEEDINGS CONTINUED

All proceedings and petitions pending before any officer or office department or board of any of the former governments or districts shall remain in full force and effect. All such petitions, hearings or other proceedings shall be completed by the offices, officers, departments or boards of the Charter Government succeeding to the rights, duties and obligations of former governments.

SEC. 1405 INTERIM VOTING RULES - BOARD OF COUNTY COMMISSIONERS

Until the election and seating of the two (2) additional County Commissioners established by this Charter, all voting rules and procedures of the former Board of County Commissioners shall remain in effect.

STATE OF FLORIDA
COUNTY OF ESCAMBIA

I, Joe A. Flowers, Comptroller and ex-officio Clerk to the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the attached is a true and correct copy of the proposed Home Rule Charter for Escambia County, as filed with me by the Chairman of the Escambia County Charter Commission on June 29, 1979, and made a part of the permanent records of the Board of County Commissioners of Escambia County, Florida.

Joe A. Flowers
County Comptroller and
ex-officio Clerk to the
Board of County Commissioners of Escambia
County, Florida

/s/ Joe A. Flowers
Joe A. Flowers,
County Comptroller

SEAL

EXCERPTS OF TRIAL TRANSCRIPT

* * * * *

TESTIMONY OF DR. JERRELL H. SHOFNER

[13] DR. JERRELL H. SHOFNER,

called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

[14] BY MR. BLACKSHERE:

Q. Dr. Shofner, you've been sworn? A. Yes.

MR. BLACKSHER: May it please the Court, this is Dr. Jerrell H. Shofner, who was born in 1929 in Haslet, Texas. He has a high school diploma from Grapevine High School in Texas, bachelor of science from Florida State University in 1960, a master of science from Florida State University in 1961, a PhD. from Florida State University in 1963. He has been on the faculties as an assistant professor and associate professor at Florida State University, Georgia Southern College, Texas Woman's University, University of Florida, and most recently he is a full professor and the chairman of the Department of History at Florida Technological University in Orlando. Dr. Shofner has also been the assistant dean of the College of Arts and Sciences at Texas Woman's University. During, he's been fourteen years in the United States Air Force and during the last eleven years, during 1949 to 1960, he was able to do, begin his career at Florida State University as a student. Dr. Shofner is a historian.

THE COURT: He's a what, sir?

MR. BLACKSHER: Historian.

THE COURT: Yes, sir.

[15] MR. BLACKSHER: He is, among other things, a member of the Florida Advisory Board for the National Historical Publications and Records Commission. He is a consultant of the Florida League of Women Voters Conference on the Executive Branch of Government. He is a member of the Editorial Board of the *Florida Historical Quarterly*, or he was from 1969 to 1977. He is presently president of the Florida Historical Society recently placed in office this year. He is the program chairman for the Conference on Ethnic Minorities of the Gulf Coast History and Humanities Conference which will be held in Pensacola in October of this year. He has a number of scholarly achievements and awards including Phi Beta Kappa and a number of other professional awards and memberships. Among his important publications which we would call to the attention of the Court are a book published in 1974 called *Nor is it Over Yet: Florida in the Era of Reconstruction, 1863 to 1877.* And among the articles that he has published we would call to the Court's attention "The Florida Constitution of 1868" in the *Florida Historical Quarterly* for 1963; "Fraud and Intimidation in the 1876 Election in Florida," again in the *Florida Historical Quarterly*, 1965; "Political Reconstruction in Florida," in the *Florida Historical Quarterly*, 1966. He [16] submitted the section on Florida to Collier's Encyclopedia in 1971 and an article called "Militant Negro Laborers in Reconstruction Florida," *Journal of Southern History*, 1973. The documents marked as plaintiffs' exhibit 1, which is on the clerk's desk - strike that, plaintiffs' exhibit 4, which is on the clerk's desk, is the curriculum vita of Dr. Shofner and contains other information about Dr. Shofner. Is what I have read just now, Dr. Shofner, correct? A. Yes.

THE COURT: You submit him as an expert. Does anyone wish to inquire at this time of him?

MR. CATON: No specific inquiries in that area.

MR. BLACKSHER: Your Honor, for the record, we seek to qualify Dr. Shofner as an expert in Florida political and social history.

THE COURT: Yes, sir. They say they don't wish to. You may so treat him as an expert in that direction and proceed.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Shofner, when did the lawyers for the plaintiffs in this case first contact you? A. The latter part of January this year, as I recall.

Q. And what did we ask you to do for us, please? [17] A. You wanted me to provide the general historical background for the pattern of segregation and disenfranchisement of blacks in Florida in state and local government.

Q. Did we ask you to investigate anything about at-large elections in Florida? A. Well, yes, that was the specific issue. The question is when at-large elections were implemented and when they were changed to districts and that sort of thing.

Q. Dr. Shofner, is your consultant's fee in any way contingent on the outcome of this litigation? A. No.

Q. Dr. Shofner, have you ever participated in litigation before as a witness? A. No.

Q. What additional sources of information, that is, over an above the information you have already acquired in your many years as a historian in Florida, have you referred to to prepare your testimony for this trial? A. That is specific materials?

Q. Yes. A. I've used the journals of the Constitutional Convention in the Constitution of 1885. The statutes, that is, session laws and annotated codes as appropriate from 1885; some newspapers, *The Tampa* [18] *Tribune* predominantly, but a couple of others here and there related to specific dates. And that's about it, I guess. I beg your pardon, I've left out something. I did read Edward C. Williamson's recent published book on *Florida in the Bourbon Era*, the approximate title, 1877 -1893.

THE COURT: Eighteen seventy-seven to - A. Ninety-three.

Q. Dr. Shofner, is there a professional methodology for the study of history? A. Yes, it's almost as broad as there are historians, but the historian has the, in our society, the disposition of being both an artist and a scientist in the sense that there has developed a body of methodology known as social science which historians apply as appropriate to their particular subject matter fields, but of course the historian is dealing with not just the past but evidence about the past and sometimes the squirrels eat up the evidence and that sort of thing so the historian's job is to immerse himself broadly enough in all the materials of a particular period and to create a record of the past, a story of the past, that being the artist side of it.

Q. Specifically I think what I'm getting at, does the [19] historian do more than just investigate the record of what appears in various documents and report those

records? Does he do more than just report? A. He certainly does. He does and must make judgments about what he finds. It's the historian's responsibility. But I think that you ought to broaden just a bit this concept of documents. The historian, of course, does deal with documents but not in a sense that we're speaking only of public documents. We deal with postage stamps, for example, and anything about the past, letters that people have written and preserved, pamphlets that companies issue about a bond sale or something like that. Newspapers are a major source of political and social history, especially in my field of the nineteenth and early twentieth century Florida, in addition to government documents and manuscripts as well. The census materials exist in manuscript for 1830 through 1880, a tremendous - that's not available after 1880, but this is a tremendous source in addition to statistical information that everyone knows about.

Q. What about oral history? A. Oral history, it's very difficult to find someone still able to give it in my period but, yes, we use oral history or evidences of oral history. Well, that gets pretty far afield. In addition to published works, secondary materials of that sort, all [20] of which, of course, has to be tested for validity, and the idea is to test one document against another with parallel information. If a newspaper is available it's good to check it against the *Journal of the House of Representatives,* let's say, or whatever it happens to be.

Q. So no one particular source, a newspaper article or a particular letter, for example, is taken on its face but must be synthesized with all the evidence to establish whatever conclusions you draw? A. Yes, that's correct.

Q. Dr. Shofner, if you were to tell how the at-large

voting in local government in Florida came about as it is today where would you begin your historical discussion? A. It's necessary, I think, to understand not only at-large voting, the idea, but the implications of it, to begin with the ending of the Civil War, at least, in 1865, because attitudes of people at that time were influential with respect to what happened. What happened was influential with respect to what came after and patterns of attitudes of whites versus blacks and the other way around too, for that matter, were set at that time. So that's where I would begin.

[21] Q. All right, would you begin there. A. I'll be glad to. Florida was one of the, it was a very late Southern state -

MR. CATON: Your Honor, if I could interrupt for a moment, I didn't quite hear where Dr. Shofner said he was beginning his history lesson. If it was back in the eighteen hundreds I would offer an objection on the basis of relevancy, number one, because as I understood the question it was a history of the State of Florida, having nothing in particular to do with the City of Pensacola or Escambia County and, number two, even if it did I don't know what the relevance of what happened in the early or late or middle eighteen hundreds has to do with the election system today.

THE COURT: Maybe he can tie it in, if that's the basis of your objection. It might be tied up. It might go to the weight, not the relevance, as I understand it, on the first ground, and Mr. Blacksher is putting this in on the question of state policy as far as the State of Florida is concerned, I assume.

MR. BLACKSHER: Yes. We do not intend to in-

troduce any evidence not related directly or indirectly to the question of how the electoral system came about. In order to put it in historical context there will be indirect references and we feel like we're charged by the case law to develop the entire -

THE COURT: I'm going to let it in. It may show some relevance. Of course, as you know, it antedates the Fourteenth and Fifteenth Amendments. I'll let it in.

MR. BLACKSHER: Finally with respect to application to Escambia County, Judge, it should be recognized the county governments are presently operating under statewide statutes.

THE COURT: It may tie in along the way. Objection will be overruled. Proceed.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. McGovern, continue. Dr. Shofner, excuse me.
A. As I was saying, Florida was one of the typical Southern cotton-producing states before the Civil War. After, too, for that matter. It had a population of about 54 percent white, 46 percent black. All but nine hundred thirty-two of the latter were slaves. The Civil War resulted in -

THE COURT: You say, wait a minute, the population of Florida after the war was what?

A. At the beginning of the war it was about 56 percent white and about 44, I beg your pardon, about 54 percent white, 46 percent black. There were about sixty-two thousand some-odd slaves in the state and nine hundred

[23] thirty-two free blacks whose activities were regulated by law, incidentally. Now, when slavery was ended by the Proclamation of Emancipation and the surrender of Lee in 1865, the President who had presided over the United States up to that point was killed almost at the same time. A new man was inaugurated in the person of Andrew Johnson, who chose to implement an existing reconstruction or readmitting of the southern states to the Union, to get them back to a normal situation in the Union, was the way he phrased it. He therefore appointed civil governors who registered voters and called for constitutional convention, which instituted the so-called Johnson Plan of Reconstruction in Florida. The people who wrote those, that constitution, and who acted in the first legislative session under it enacted a series of laws which came to be known popularly as the Black Codes in that they distinguished clearly between white and black citizens, and the way this came about, just as an example, a man named Anderson J. Peele, who was from Lloyd, Florida, and I think later on went to Texas and became attorney general of the state, but anyway he was not there yet, presided over a committee which was to make the laws of Florida consistent with the actions of recent years, and that meant to, of course, wipe out the old slave code and include the Freedmen into the body politic, or at [24] least into the body of free people. And his idea was that the Freedmen should be elevated to the position of free blacks before the war. And in his address to the Legislature he said, to give you an idea of what he meant by this, "There was nothing wrong with the much maligned but benevolent institution of slavery except perhaps the lack of marriage law. Therefore we should depart no more than absolutely necessary from that institution." And they didn't. This left blacks in an inferior position.

They could not testify in court except in cases involving blacks, as a case in point, and much more. This happened throughout the other southern states, and Johnson's plan of reconstruction from the executive branch was overturned by a growing group of so-called Radical Republicans in the Congress. They were able to stop Johnson's plan and replace it with one of their own known as Congressional Reconstruction, which dates from about March 2nd, 1867. It put a military commander in charge.

THE COURT: What date did you say?

A. March 2nd, 1867, was the date of the first Reconstruction Act. There were some supplemental ones but that's the one that was important. It provided for a military commander, major general, to be placed in charge of various districts. Florida was in the Third District. And the general was to do it all over again with the difference that oaths of loyalty had to be taken by all the registrants for the election, including all adult Negro males. And in the election which followed, let's see, there were about something like fifteen thousand black registered and about eleven thousand whites. Those are rough figures.

Q. What year are we in now? A. Sixty-eight. Well, late '67. This was completed, I think -

MR. CATON: Excuse me, could you clarify, when you say '68, we're talking about 1868? A. Yes.

MR. CATON: Thank you.

THE COURT: I will assume that's what he was talking about. Proceed, sir. I think it's a reasonable assumption. A. In the convention the delegates to the convention elected came together in January, 1868, and this is the so-called Republican Constitution, the constitution of 1868,

which was ratified in that year, and civil government was restored in Florida on July the 4th, 1868, with a man named Harrison Reed from Wisconsin as Governor. Now, [26] that constitution and the convention is very important because it was made up, the convention, of eighteen black people and the rest of the forty-six delegates were white.

THE COURT: Of how many delegates?

A. There were forty-six delegates.

THE COURT: You're speaking now of the convention that adopted the constitution of 1868?

A. Yes, sir. Of the remaining people about, as near as I've been able to determine, were what we would refer to as Conservatives and later Conservative Democrats. The remainder were a combination of white Republicans, referred to in the parlance of the time and a long time after that as carpetbaggers if they were from outside the state, federal officers or Freedmen Bureau officials who happened to be in the state for one reason or another, but a good many of them were local people, native whites or people who lived a long time in Florida, referred to as scalawags. That was a defamatory term. But they didn't agree on the kind of state they wanted and through some very extraordinary procedures, including secession from the convention, a group of moderate white Republicans wrote a constitution which guaranteed white government in the State of Florida under this reconstruction law. Harrison Reed, for example, commented on it to a prominent [27] democrat that, "we have saved the state for the white people." The way they did this was to apportion representation not according to numbers but rather more according to space.

Q. You mean the legislature? A. In the legislature.

THE COURT: According to what?

A. According to geography, in that each county must have at least one representative in the lower house and no county more than four. The population of Florida was arranged so that had it been numerically proportional Leon County, for example, would have had seven members in the lower house and the four counties on the lower end of the state except Monroe, let's see, Dade, Broward, Brevard and Polk, Dade had fourteen voters in those days, incidentally, would have shared a representative. So by requiring each county to have at least one and no county more than four, the people who wrote the constitution guaranteed that the white counties would dominate the lower house and the Senate districting was similar to this.

Q. Were there some black counties at that time, majority black counties? A. There were ten counties in the northern part of the state, namely the old cotton belt, plus Nassau and Duval in the northeastern corner which had, all these had a majority of black people in them, and not [28] only that but the majority of black people in the State of Florida lived in those ten counties. So you have, there are a total of thirty-nine counties. The other twenty-nine then had white majorities and so people in the twenty-nine white counties wouldn't always have the same kind of desires with respect to representation that the people in those ten northern counties had.

Q. How was black control of the local government in the counties secured under the 1868 constitution? A. That was the other provision of the constitution. They wrote a constitution that gave the Governor power to appoint every officer in the state except local constables, including all the court officials, all the cabinet members,

all the county officials and community officials except local constables. A voter under this constitution would vote for a constable, a member of the House, member of the Senate, Governor, Lieutenant Governor, and that was it. So with the election of Harrison Reed, who was a member of this moderate group, they had pretty close control of the state then. But the Republicans weren't able to build a cohesive party. They soon were fighting among themselves and pretty much discredited themselves in the state over the next eight years so that in a very close election [29] and one in which the national presidency was at stake involving Republican Rutherford B. Hayes versus Samuel J. Tilden, and Florida's vote was decisive in the outcome of that election, some bargains were struck by which the Republican candidate was allowed to take the presidency. Hayes was seated. A Democrat, George F. Drew, was seated as Governor of Florida, and this was hailed as the redemption of Florida, the restoration of home rule and that kind of thing. Hayes had agreed to withdraw troops from the South in general, not just Florida. They left voluntarily in Florida on January 19, but there still were troops in Louisiana and South Carolina. He agreed to withdraw them and he did. When he did, the Republican administrations in those two states fell and that was the last time that federal troops were used in the South with regard to Reconstruction laws. After this in Florida there were some very close elections but the very powerful governor's office, you see, was now in the hands of the Conservative Democrats. He appointed, for example, county commissioners. The county commissioners established the polling places and handled the election machinery and it was fairly easy that way to manage to get majorities. But as that happened year after year whites in the state became more distant from reconstruction or less fearful of a return to Republican or black rule, as they call it.

[30] Q. What was, was the 1885 constitution the first constitution of the so-called Redemptionists? A. Yes, it grew out of this. It took a while because there were a lot of people who didn't want to risk calling together a constitutional convention, especially the whites who lived in those ten counties dominated by black majorities, but there were twenty-nine other counties who had most –

MR. CATON: Your Honor, excuse me. If I could interrupt again at this time, we feel that most of this testimony is irrelevant so I haven't made several objections when I could have.

THE COURT: You want a continuing objection? I note a continuing objection to the relevance of this till such time as you state.

MR. CATON: Yes, but I would like to state one more objection at this time, if I could, and that is when Dr. Shofner starts expressing opinions such as the one he just did here about the whites that lived in the ten counties that were predominently black, now, before he states an opinion as to what those people did like or didn't like I would like to know the basis for him arriving at that opinion. The facts that he states I don't mind but when he states opinions like that –

[31] THE COURT: You may ascertain that on cross examination, if you wish to do so.

MR. CATON: Well, I would like to object to him stating such an opinion.

THE COURT: The objection is overruled, sir. I note a continuing objection to relevancy to keep you from jumping up and down until such time as you withdraw it.

MR. CATON: Yes, sir.

THE COURT: And overrule it, unless I change my mind. Proceed, sir.

Q. The 1885 constitution then, Dr. Shofner? A. Okay, it's considerably more than opinion but there was a good deal of discussion in public, in private and elsewhere among members of the Conservative Democratic Party from these ten counties I referred to and their colleagues in other counties. They were going to call for a constitutional convention in 1882. It was defeated. There was a call for a constitutional convention in 1884 and it was approved by something like a four to one majority. Anyhow the convention met in the summer, early summer of 1885, and the objections of the white people in the northern counties, the black majority counties, was met by a provision in this constitutional document that reduced vastly the powers of the Governor, made most officers in the state elective but continued the appointment of county commissioners.

[32] Q. By the Governor? A. By the Governor. It also added a provision for a poll tax, and of course ultimately the poll tax was implemented. This was ratified at the next general election by a vote of about thirty-one thousand to twenty-one thousand roughly. Then under that new constitution the poll tax law was implemented in 1889 and you can see pretty much from the voting, the election figures of 1888, 1890 and '92 what the effect of that was. In 1888 a Democrat won the Governor's office. Francis P. Fleming got about forty thousand votes and a Republican named B. J. Shipman got about twenty-six thousand votes. In 1890 there was no gubernatorial election but a statewide Comptroller's race saw the Republicans getting forty-seven hundred votes, forty-seven hundred eleven, I think. In '92, the next gubernatorial election, the Republicans didn't put up a can-

didate. A Populist ran and he received something like eight thousand votes as opposed to roughly twenty or twenty-five thousand for the Democrat, Henry Mitchell.

Q. Are you making a point with suggestion to black disenfranchisement? A. I'm suggesting the passage of the poll tax law, the implementation of the so-called eight ballot box law which came at the same time, by which the [33] ballot boxes were marked according to names and offices of the candidates, and people had to put the ballot in the right box in order to have it counted, which was to some extent, I suppose, a literacy requirement, it being very difficult for a person to get the ballot in the right box if he couldn't read, had the general effect and was intended to have the general effect of making it more difficult for blacks to participate in the voting process. And those figures I've mentioned are suggestive of the degree to which they did have that effect.

Q. Is it your contention then that blacks were largely disenfranchised by sometime in this period, 1890 or '92?

MR. CATON: Your Honor, I will –

A. Largely.

MR. CATON: We've got a witness who can testify. Mr. Blacksher doesn't need to. I would prefer him not ask leading questions to an expert witness.

THE COURT: That objection will be sustained. Mr. Blacksher, don't lead your witness.

Q. What evidence of black voting was there after the passage of the poll tax and eight ballot box rule, Dr. Shofner?

[34] A. What evidence of black voting?

Q. Yes, sir. A. Well, the opposition party could

only get a few votes and the opposition party tended to be the party that got the black votes. So that's the evidence that I see, that they got a few thousand votes throughout the eighteen nineties and it went even lower with the early nineteen hundreds. Also the entire number of votes went down in the early nineteen hundreds.

Q. Do you have an opinion as to how many black voters there were by 1892? A. Less than four thousand.

Q. As opposed to how many were there, say, ten years earlier? A. Around twenty-seven or eight thousand.

Q. Had that four thousand number changed appreciably by 1900? A. It continued to decline. By 1900 the election figures you get, you've just about got to go to the Secretary of State's office to find them. Very rarely did they even bother to record the specific numbers because nobody doubted the outcome. But it was a diminishing number. But a few blacks continued to vote right on through, through the early nineteen hundreds.

Q. Dr. Shofner, how did the all-white closed [35] democratic primary develop in Florida? A. It started spontaneously in some counties in the eighteen eighties and of course this was going on about the country as well. Some of the counties in Florida picked it up. It became a more favorable thing as the eighteen nineties passed, and in 1897 the Legislature passed a permissive law allowing those counties which chose to nominate their party candidates by primary. Then the Democratic Party ruled in August, 1900, that the Democratic Party would be made up of those people, and it spelled out who would make, who would qualify as a voter. It would be people who had been able to demonstrate that they voted the democratic ticket in the past, national and state, from top

to bottom, I believe, was the was it was phrased. There was a constitutional amendment in 1900 that was passed by the 1899 Legislature, voted on and approved in 1900, and in the election of 1900 the party had agreed that, "We will allow, although it's not yet constitutional, to have the choice, the Governor still appoints them, but the party will hold the primary and the people who win the primary will be appointed by the Governor and affirmed by the Senate." And they were. Then in 1901 a mandatory primary system passed. That's the first time that you have statewide primary voting by law.

[36] Q. You mean the law passed, the primary law passed in 1897 was not mandatory? A. It was permissive.

Q. By county, you mean? A. By county. Nineteen one was mandatory.

Q. Let's talk at this point and talk specifically about how county commissioners and members of the Board of Public Instruction were selected during this period, let's say from 1885 when the new Redemptionist constitution came in. It provided, I think you said, for appointment by the Governor? A. Yes. The law of 1887 enacted that provision in a constitutional provision.

Q. That was the county commissioners. How did the 1885 constitution deal with school boards, Boards of Public Instruction? A. There was law in 1889 that made them elective and in 1893 that made them elective by districts.

Q. The 1889 law did what? A. It changed them. They'd been appointed.

Q. By whom? A. By the Governor. The 1889 law made them elective from the counties and then the 1893 law made them elective by districts.

THE COURT: You mean single-member districts?

[37] A. Yes, sir.

MR. BLACKSHER: May it please the Court, with respect to the 1893 law there's some disagreement between the parties whether it was 1893 or 1895. We have a copy of the 1893 Act.

THE COURT: If he says it's 1893, they can agree with it or they can come in with evidence. It's pretty far back anyhow.

A. A law in 1895 was relevant perhaps, though, because although the constitution of 1895 had provided for separate schools for blacks and whites, although impartial, which was a continuation, incidentally, the Reconstruction law had not provided for integration of schools, it provided for people to have integrated schools if those chose; they didn't choose. And then the 1885 constitution provided for separate schools but in 1895 a law was passed imposing penalties on teachers and administrators who had anything to do with schools that taught the races together. So that, it had been the case already, but this it the first time you have penalties. This would be one of the early Jim Crow laws as they were referred to popularly after that.

Q. All right, why did, what happened in the political scene to make it possible for county commissioners to become elective instead of appointive by virtue of the 1900 [38] constitutional amendment? A. A 1907 statute changed the election law.

Q. No, I'm sorry, you misunderstood my question. What were the changes in circumstances within the body politic that permitted — A. I'm sorry.

Q. That permitted a change from appointive county commissioners to elective county commissioners by virtue of the 1900 amendment to the constitution? A. Well, it was the diminution, vast diminution in number of people voting for the Republican Party, which meant the diminution in the number of blacks who were voting. Neither blacks as a voting group nor the Republican Party as an entity was a threat to the Democratic Party, which was verbally again and again saying that it was there to maintain white supremacy. And it does not require an opinion, incidentally, because they said it specifically again and again and again.

Q. Who said it? A. The people who were doing it, the white democrats.

MR. LOTT: Your Honor, I object to this. If it's not his opinion it's relation of hearsay evidence.

THE COURT: He's basing his opinion on something that he said that he read that people said. I don't think so, [39] Mr. Lott. I think it can come on in. As a matter of fact I am not sure any of us so far have heard anything this gentleman has said with which we have any real disagreement. It's rudimentary or elementary or however you want to take it that back in the days he's talking about there were indeed Jim Crow laws and indeed these other things and these poll taxes and other things probably did have the effect and were with the intention of trying to cut down the Republican race and they were trying to get rid of the carpetbagger era in all those days. I'm just wondering why you all don't want to stipulate to this instead of objecting, if it has any relevance. I'll overrule the objection. I don't know how much you want to go into, Mr. Blacksher. You go into a lot of way back background. So far as I can tell we're not even up to 1900 yet and we've got a long way to go.

MR. FLEMING: Your Honor, pardon me, before you proceed further I just noticed a gentleman come in the courtroom at the last minute. Mr. Toney Wilson is a member of the county staff who I spoke to the Court about during pretrial conference. Mr. Wilson will likely be a witness in the case.

THE COURT: If he's going to be your witness, get him out of here. That's your obligation. And advise him of the [40] rule. Any witnesses in this room go out of this room and it's the obligation of counsel to advise them of the rule. Mr. Fleming, I want you to screen your witnesses.

MR. FLEMING: What I was suggesting, Your Honor, I was going to remind the Court that at the time of the pretrial conference we discussed the matter of the assistance of staff, Mr. Wilson in particular, and we'd ask that he be excluded from the rule so that he could both participate and assist counsel as well as testify.

THE COURT: Let's see what they say about it. I don't know about that one. Do you have any objection to that, sir?

MR. BLACKSHER: I think they're entitled to one representative in the courtroom, Your Honor.

THE COURT: Will this be your one representative?

MR. FLEMING: For the county, yes, sir.

THE COURT: All right, sir, you'll be excused from the rule.

MR. FLEMING: Thank you, Your Honor.

THE COURT: Proceed, sir.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Shofner, let's change the subject somewhat. Could you tell us with respect to the black franchise what role did violence and intimidation, both economic and [41] physical, play in Florida?

A. It played eventually decisive role as the federal election supervisors and the United States Army ceased to patrol and supervise elections, but it was vigorous during the Reconstruction period itself. In fact there was so much violence in Florida, mostly in the counties where there was a large number of whites and blacks, in the counties where blacks were, say, eight to one they were pretty quiet elections and in the counties where the whites were in an overwhelming majority, the same thing, but in counties like Jackson and Madison and Columbia and Alachua and Marion where you have a large number of both, this is where most of the contention came, it seems, and in Jackson County, for example, what has been referred to as the Jackson County War resulted in about a hundred sixty-nine deaths between 1868 and 1871. This kind of testimony, nightriding by organizations such as the Klan, and incidentally, the Klan, the nightriding outfit in Florida during Reconstruction was called the Young Men's Democratic Party. They were more honest than some. And this brought about three laws by Congress known as the Force Acts in the South, of course, Enforcement Acts, which empowered the President of the United States to appoint federal election supervisors at each polling place and also to declare [42] martial law and use military force where he felt that the civil authority had been exceeded. So violence was a part of it and continued to be. Economic intimidation was out on the front.

MR. LOTT: Judge, if I may interrupt a minute, we object to this line of testimony from the witness in that it doesn't relate to anything on official level of state policy, and that's the point the historian is trying to make here, and particularly to the fact it doesn't relate to any violence or anything, he didn't mention Escambia County at all. We don't feel it's relevant to Escambia County or state policy that he's trying to prove.

THE COURT: Mr. Lott, I think perhaps to a large extent your objection is good, but overall I'm having a little problem on the violence and so forth. We're still trying to get it to state policy. That's all this is about, I guess. I don't know how much further you're going. Can't we kind of get on up? We're still not up to 1900 even. We've got a long way to go. There's not much real argument, is there, gentlemen, about the fact in the days he was talking about indeed we did have poll tax laws and we had other things. We had a period of time when we had carpetbagger government and they threw that out and in turn intimidated the blacks and tried to keep them from voting [43] through poll tax and other ways, and their vote was diluted beyond any question in those days. They simply didn't have a right to vote for many days. Is there any argument about that?

MR. CATON: Basically, no, Your Honor.

THE COURT: I could almost take judicial notice of it, can't I, it's been so well established historically?

MR. CATON: That's the basic argument, is the relevancy.

THE COURT: We've still got to come on up. Can't we move this thing up a little bit? Let's see what they say.

MR. LOTT: Your Honor, we're content to rest on

determination by the Fifth Circuit in *McGill* in 1971, by 1900 the black vote was completely disenfranchised, and we feel it's already been determined.

THE COURT: That was in Florida?

MR. LOTT: Yes, sir, as to county commissioners and school board.

THE COURT: If you want to, let's jump beyond it because you're not even contesting the fact, what you say, that the *McGill* opinion on the evidence there said they were completely disenfranchised by 1900.

MR. LOTT: Yes, sir, and they spoke to Florida.

THE COURT: How's that?

[44] MR. LOTT: The Court was speaking to Florida.

THE COURT: Speaking to Florida, so can't we move this along, sir?

MR. BLACKSHER: Yes, sir.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Were the blacks entirely disenfranchised? Were there no black voters at all by 1900, Dr. Shofner? A. There were some, a few, here and there. Duval County had a considerable number because of a peculiar situation in Duval County. But a good many counties had a few black voters.

Q. Did the violation and intimidation continue after the turn of the century; and what relevance does the violence and intimidation have to state policy? A. It's relevant among other things in that the state condoned it. As blacks were pushed out of politics what you have was a

legalization of the custom that had existed in this earlier period in that whites tended to feel themselves superior to blacks. It was proper that they be kicked out of public affairs because they weren't qualified to be there. It was a necessary thing to resort to whatever violence, whatever economic intimidation was necessary to bring about this desirable end of white control of government. But it also carried with it the legalization of the worst kinds of human [45] violence. I'm not suggesting that the decent lawmakers of the state condoned this but by leaving blacks without a place to go for redress of grievances they opened up to the worst kind of thugs some of the worst kinds of mistreatment, and this continued well through the twentieth century, at least until 1951.

THE COURT: At least until when, sir?

A. At least until 1951 when an NAACP voter registration man named Harry T. Moore was blown out of his bed on Christmas night at Mims, Florida, and killed along with his wife, her problem being that she was there with him. So there were no indictments in this case and rarely were there indictments in any of these cases. A Governor of Florida in 1919 protested to a white executive secretary of the NAACP who was named Shillady – the NAACP by that time had decided it ought to do something about the widespread lynching, and one thing it was doing was writing the Governors of the States to let them know such had happened in their state, and this was Sidney J. Catts, who was a rather outspoken one of our Governors, and he wrote, and this happened in Escambia County, incidentally, near Pensacola, and a man was taken out of a place called Turpentine Camp, I confess I don't know where that was, there were a good many turpentine camps in [46] Escambia County at that time, and he was accused of a rape, which was very often the case. He was taken

away from a sheriff who may or may not have resisted the mob. There was some discussion about that. And he was burned to death. And Shillady was pointing out to the Governor of the state this was kind of a bad way to go. And the Governor responded to him in effect, "It's none of your business, that it would be ridiculous for me to try, as you say I should try, to bring in the people who caused this man's death, because the public will not consent to that kind of behavior on the part of a governor." So it seems to me that there was a continuation of the disenfranchisement of blacks, the relegation of them to an inferior position, and the encouraging then of violence once we had got a habit of violence.

MR. BLACKSHER: With respect to the response of Governor Catts, Your Honor, the text of his telegram to Shillady is set out on page 17 of my findings. I would like to get that in evidence.

THE COURT: I don't know whether they have objection to it.

MR. BLACKSHER: Dr. Shofner provided me this telegram text.

THE COURT: Is that what you're referring to?

A. Yes, sir, it is, and in my opinion it shows a [47] continuation of what we're talking about here.

THE COURT: What is it, exhibit what?

MR. BLACKSHER: On page 17 of the proposed findings, Your honor. I could have him read from his notes whats it says.

THE COURT: It would take longer to do it. Any objections to it?

MR. FLEMING: Your Honor, I would interpose objec-

tion at this time on a number of grounds, first relevancy because it deals with the Governor and in no event with the county commissioners or school board or city council and, secondly, on the grounds of opinion in that the Governor in this alleged statement is alleged to state his opinion with respect to what the citizenship would stand for. I think it's inadmissible for both of those reasons.

THE COURT: Objection on both those grounds will be overruled, if that's the objection. It will be received in evidence. Do you have it anywhere?

DEPUTY CLERK: No, sir, I don't have it.

THE COURT: Where is it?

MR. BLACKSHER: I don't know what number. Is it in your exhibit list?

THE COURT: We didn't put all the exhibits in evidence as I said we were going to do at the start.

[48] MR. BLACKSHER: I said it's in the plaintiffs' proposed findings of fact.

THE COURT: I realize that.

MR. BLACKSHER: I was just going to have Dr. Shofner read it, Your Honor, from his notes.

THE COURT: Let him go ahead and read it.

A. I didn't bring any notes with me. What I'm giving you was –

Q. Dr. Shofner, have you inspected our proposed findings of fact before and did you provide me notes, some of which I copied into these findings? And I refer you to page 17 in our proposed findings at the top, and would you read the text of Governor Catts' telegram to Mr. Shillardy of the NAACP in 1919.

A. Catts' reply in part was, "You asked me to see that these lynchers are brought to trial. This would be impossible to do as conditions now are in Florida, for when a Negro brute or a white man ravishes a white woman in the State of Florida there is no use having the people who see that this man meets death brought to trial. Even if you could find who they were. The citizenship will not stand for it."

MR. FLEMING: Your Honor, I renew the objection on the grounds that it's an inadmissible opinion.

THE COURT: Objection is overruled. Now, let's see, I [49] had both you and Mr. Lott coming to me with objections.

MR. FLEMING: Pardon me, Your Honor.

THE COURT: You all make objections together or something. I believe I've had both of you on your feet with objections.

MR. FLEMING: We'll make an effort to, Your Honor.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Now, Dr. Shofner, I would like for you to discuss in a specific category here, isolate on the history of election systems for the county commission, and let's try to put it in order beginning where you did in the 1868 constitution and let's just put it in line, how the county commission was chosen up to the present. A. Okay. The 1868 constitution provided for appointive county commissioners to be appointed by the Governor, confirmed by the Senate, along with all the other officers in the state. The 1885 constitution changed all other officers, just about, to elective, but continued the appointment of county commissioners by the Governor with confirmation by the

Senate. This was implemented by statute in 1887. The situation remained that way until the constitutional amendment ratified in 1900 that made them elective at large with the party rules of 1900 saying, "We'll go ahead and do it this was in 1900. We'll elect and [50] the Governor will, by agreement, appoint as we choose."

Q. So the primary was run at-large in 1900 as well as the general election for county commissioners? A. Primary and general election.

Q. All right, what happened next? A. The 1907 statute making county commissioners elective from districts was implemented. I beg your pardon, nominated in the primary nominating process. They continued to be elective in the general election.

THE COURT: This is the 1907 statute made them nominative?

A. To be nominated from districts by the voters of those districts.

Q. So as of 1907 we had single member districts in the primary, at-large elections in the general election, is that correct?

A. Yes. This is confirmed by a noted historian in 1936, William T. Cash, who is a reveered historian over at Florida State College for Women, who wrote a history of the Democratic Party, and he makes a special point of this, that the Democratic Party by using the white primary had gone far towards purifying politics because it allowed them to exclude Negroes from the election, the only election that made any difference. The general election didn't matter after that time.

[51] THE COURT: What prevented the blacks from becoming members of that Democratic Party in those days?

A. The Democratic Party rules said you had to be white to be.

THE COURT: You had to be white?

A. Yes, and a male, of course. It was referred to as the white primary.

Q. In 1907 was in the beginning or in the midst of what is known as the Progressive Period nationally in elections. Would you just explain what that was and what it affected, what effect it may have had on voting schemes here in Florida?

A. Okay, there was a considerable unrest throughout the country which led to demands for getting the people more directly into the political process. There were calls for direct election of United States Senators and the right to initiate legislation and call up judges on recall provisions and to call up legislation which had been passed for what was called a referendum, and many other things. Women's suffrage was considered. They wanted to outlaw alcohol throughout the nation. And it was a widespread demand throughout the country for the county commission form of government, I mean the city commission, excuse me, city commission form of government was part of this move. It included the [52] secret ballot or Australian ballot, which was being implemented throughout the country.

THE COURT: Are you going to bring him to county commissioners? You started on this. Are we getting away from this and into background? Is this what you want him to do?

MR. BLACKSHER: Yes, sir.

A. I'm sorry, I thought –

THE COURT: The question was to come on up to date and give us the sequence on county commissioners.

Q. I'm sorry. County commissioners, 1907 was where we left off on the chronology of county commissioners. I apologize.

A. That is really the last thing that was done in Florida as near as I've been able to determine with regard to county commission elections until 1954. It remained that way.

Q. How long did the white primary last?

A. The white primary lasted until 1945 in this state.

Q. *Smith versus Allwright* was —?

A. Nineteen forty-four. It was followed by *Davis versus State of Florida* with respect to a suit from a man named Esau Chavis, a resident of Escambia County. The state intervened in this case.

[53] Q. All right, sir, and after the end of the white primary at that time were county commissioners still elected in the primaries from single member districts in 1945?

A. Yes.

Q. And then when did the election system next change?

A. It seems to me there were twenty-nine, about twenty-nine at any rate, counties, which had gone to at-large by special legislation.

THE COURT: By what date?

A. By 1954, between the late forties and '54. The '54 *Ervin versus Richardson* case decided by the Supreme Court mandated at-large elections by declaring the 1907 statute unconstitutional. So it was uniform throughout the state after 1954.

Q. Have there been any changes in the method of elec-

ting county commissioners either in primary or the general election since the 1954 *Ervin versus Richardson* case?

A. Have there been changes?

Q. Yes, sir. A. If so it's on an individual basis. As far as I know there haven't been.

Q. All right. Now, with respect to the school board [54] elections could we do the same –

THE COURT: Just a minute. The county commissioners, you say, since 1954, so far as you know they've just been all at-large elections for county commissioners? A. As far as the state policy is concerned. There hasn't been any change at the state level.

THE COURT: But also - A. Are you talking about the local -

THE COURT: I'm talking about county commissioners on state policy. State policy at that time was at-large elections without primaries? A. Oh, the primaries were made, the 1907 law which had allowed or required the nomination in primaries -

THE COURT: It was knocked out by the court decision? A. Knocked out by the court decision.

THE COURT: From that time on up you have at-large elections. A. At-large.

THE COURT: Without primaries? A. In the primaries. It doesn't make much difference in the outcome from 1954.

THE COURT: But also that law, when did it put into effect the requirement that county commissioners, that they had to run from and come from different, we had the

[55] residence requirement where they had to be residents of various districts. A. They'd always been required to live in the districts they represented and still do.

THE COURT: It's always been that way? A. It was in that early law, 1887 or, yes, they've always had to represent a district.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. You mean even when the Governor was appointing them? A. He appointed them from districts. That's been consistent, I think.

THE COURT: All right, sir.

Q. Could we do the same thing now, Dr. Shofner, with respect to school board elections. A. Okay. The 1885 constitution did put Florida, the State of Florida, in the business of supporting a public school system and it provided for the establishment of county, what do they call it, the superintendents, what was the commission called, it was a school board.

THE COURT: Trustees?

A. The trustees, right.

Q. Are you talking about the trustees or the boards of [56] public instruction? A. Okay, the Board of Public Instruction is the term I was having trouble recalling there. We've changed all that now.

THE COURT: The Board of Public Instruction wasn't provided for in the constitution of 1885, was it? A. Boards, a state superintendent and county boards.

THE COURT: Trustees? A. They may have used the term trustees. I'm not sure.

THE COURT: Let's go along. I think it was trustees and came by legislation to the board later. A. It's a school board anyhow.

THE COURT: All right, sir.

A. And in 1889 then the school board members were made elective at-large from residence districts or they had to live in the district from which elected. In '93 they were made elective by the voters of the district from which elected. No I beg your pardon, that's not correct either.

Q. Now, the notes that I had – A. Yes.

Q. The 1889 Act was appointive. A. That's the step I left out. Eighteen eighty-nine made them appointive, [57] that's right, and '93 made them elective but elective at-large. I got ahead of myself. And then in 1907 at the same time that the county commissioners were made, that is, they were allowed to be nominated in the Democratic primary from districts, the county school board members were also made.

Q. Okay, once again that's somewhat inconsistent with my notes, which say that there was an appointive provision in 1889 and in 1893 local counties were allowed to elect their school board but they were from single-member districts. A. Elected at-large, weren't they?

Q. Well, we have the Act. A. Okay.

Q. So we will provide the Court with the Act and I think it says single-member districts.

THE COURT: You're talking now about law and I'm going to let you get into it. I may be wrong. I think there's

a slight mixup. I think what he's talking about is they went to the old trustee districts and when they said they would come from the districts they would have several trustees districts within a county.

A. Within the county, that's right.

THE COURT: And that they were elected or appointed from the particular districts. Somewhere along the way, of course, they came along and we had a Board of Public Instruction by general law and got into something else, but [58] for a period of time still had the trustees in the districts but they finally were done away with. I believe it's something like that.

A. They were allowed in the late eighties, people in subdistricts could vote to subject the trusteeships, and that lasted apparently to the Minimum Foundation Law.

THE COURT: It lasted a long time. They got away from it in Florida because they created the Board of Public Instruction. You're the historian but it's my understanding that distance had a great deal to do with it in those days.

A. Distance, that's correct. That's why the subdistricts were created.

THE COURT: And more and more you had one body you needed for the county. It didn't have much to do with race. That didn't have much to do with it. Am I wrong in that?

A. No, sir, I think that's a major reason for it.

MR. BLACKSHER: May I approach the bench? These are copies of the 1889 and 1893 statutes.

THE COURT: I'll take them but I think really we need to get beyond this. All you're saying, doing so far, of

course, you had a pretty well pattern in the South in way bygone days, and bringing it up to date. You're getting [59] closer but you've got this thing to 1907 on the school board trustees and so forth and haven't brought it up to date, come to think of it, have we?

MR. BLACKSHER: Your Honor, perhaps I should explain myself on where we think this evidence is taking us, the theories. Would that be helpful at this point?

THE COURT: I think I know why you're trying to bring it in and you're getting closer but I just realized all the discussion was in 1907 on the trustees and the school board, I think. We didn't let him bring us up to date. I think he was a little mixed up.

A. I got ahead of myself.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Go ahead, Dr. Shofner. A. This situation remained constant through 1919. There was a condification of the laws and annotation and another in '27 and in '39 another, all of which kept the electoral system of the school boards the same. And then in '47 after the white primary was done away with in Florida but also at a time when the Minimum Foundation Program, the large overhauling of the state system financing education and other things was passed, in that 1947 statute the school board members were made elective at-large. Or I keep mentioning -

[60] THE COURT: Just a minute, sir. Are you telling me school board members at-large were not made elective at-large until 1947?

A. I've used the wrong term. The Democratic primary has been used as the election and I've fallen error to the same thing. They had always been elected at-large in the general election but they were made to be nominated from counties at-large in 1947.

THE COURT: Are you sure they were not nominated in primaries at-large before that time, sir?

A. Yes, sir.

MR. BLACKSHER: Single-member districts.

THE COURT: They weren't nominated from districts before that time; they were nominated at-large. In the primary they went at-large before that time, didn't they, in the primaries?

A. Not to my knowledge.

THE COURT: Before 1947?

A. Not before 1947. From 1907 to 1947 –

THE COURT: From 1907 to 1947 they went what in primaries? At-large?

A. The primary was from districts from 1907.

THE COURT: I may be wrong but I think we're still confusing trustees and board members. Do you know that [61] much about this?

MR. RAY I'm still confused, Judge. I don't know.

THE COURT: Well, I'm going to get him, we'll let him, I'm going to get him to check it. I think there's a little confusion. I may be wrong. My recollection, and I may be wrong, I was old enough to be voting back in those days; I don't remember it like he said it. I remember school board

members were nominated and elected from the county at-large with the trustees, they might have been elected at-large but they were nominated, and after a while the trustees went out and finally got around to the constitution and it served a useful purpose.

A. I had been under the impression that those sub-districts were done away with in '47.

THE COURT: Well, I've forgotten just when they were.

A. I thought that law did it and made the county the school district from '47 on.

THE COURT: No, sir, I think it came a little later there but they did get rid of them a little later in the change in the new constitution, as I recall. I'm not sure. Go ahead.

MR. BLACKSHER: Yes, sir. In bringing copies of the statutes we'll try diligently to –

[62] THE COURT: Maybe at a recess or something you all can look at the statutes and see what they were. That will be fine, sir. Or let him look at them and then he can be positive about it. But anyhow now we come on. We came on up and in 1947 according to what we have we're getting, we're nominating from districts but electing at-large. Is that right?

A. MR. BLACKSHER: Until 1947, and then in 1947 at-large, both primary and general. The Minimum Foundation Act changed the district elections in the primaries to at-large elections.

THE COURT: All right, sir.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Shofner, I would like to ask you if in your expert opinion, did the concept of white supremacy and dilution of black voting strength play any part in the reestablishment of at-large voting in the primary elections for county commission and school board elections as you have testified? A. I think so.

THE COURT: In the establishment of at-large elections, you say?

A. Yes. Q. Would you explain yourself, please.

[63] A. Well, the local voting for representatives was acceptable in the state down to the time that, here again I'm speaking of the nominating process in the Democratic primary, was acceptable until there was a threat to the white primary. It was outlawed by the national court in '44 and by the State of Florida Supreme Court in '45 and it's been since that time that voter registration drives have been inspired and resisted and it's been during that time that we changed back to at-large elections, that it has come back in both the school board and county commission level. Mr. Cash, the historian of the Democratic Party in '36, talked about good government in terms of cleaning up the electorate by keeping blacks out of it. I think that that is more satisfactory to a person to say than to say, "Let's disenfranchise blacks." It's just in the same case it was a lot better to talk about protecting the rights of the states versus incursion of federal Supreme Courts, say, about the time of Earl Warren and the *Brown* decision in 1954 than it was to talk about discrimination against certain categories of people. And in that sense good government meant a good many more things than just getting rid of

wards, as the people in Tampa were talking about, and that sort of thing. Yes, I think there's a correlation between the opening up of the possibility of [63] blacks voting in the electoral process, in that part of the electoral process which counted, the Democratic primary, and these changes.

MR. BLACKSHER: That's all, Your Honor.

MR. CATON: Your Honor, would you prefer our cross to be conducted here or at the podium?

THE COURT: Over at the podium, Mr. Caton. You'll always feel better standing on your feet when you address the Court, Mr. Caton.

MR. CATON: Did the Court wish a recess now

THE COURT: I'm willing to take a short recess, I thought maybe you want to finish the witness and recess for lunch.

MR. CATON: If we could take a short recess.

THE COURT: You want a short recess?

MR. CATON: Yes, sir.

THE COURT: Court will be in recess for about ten minutes.

(Recess)

(Open court)

THE COURT: Let's see, who's going to proceed? You may proceed, Mr. Caton, on cross examination.

MR. BLACKSHER: Your Honor, before the cross examination begins, and if you please, we have, as you instructed, gone over the statutes, and Dr. Shofner has them [65] in front of him if you would like to go over that point on the school board.

THE COURT: Well, all right. Mr. Caton, let's let him finish up and put it right with you.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Go ahead. A. The 1889 statute, I was correct on that, it did refer to county boards of public instruction. And –

Q. And they were appointed under that? A. They were appointive, yes, and then the '93.

Q. Who appointed them, by the way? I don't think that's clear on the record, Dr. Shofner. Who does the statute say appoints the Board of Public Instruction in 1889? A. Shall be appointed by the State Superintendent of Public Instruction, State Board, no, I beg your pardon, it's the Governor. I know it's the Governor because there was a big battle in 1917 between the Governor and the Superintendent of Public Instruction.

Q. What does that statute say? A. It doesn't say.

Q. Okay.

THE COURT: We can look at the statute later. Go [66] ahead and tell us the rest of it. Go ahead.

A. It's not manifest.

THE COURT: All right.

A. Anyway it's appointive, and the '93 version still refers to County Board of Public Instruction and makes them elective. In '95 –

Q. How are they elective in '93? At-large?

A. At-large.

Q. At-large or from districts, Dr. Shofner? Would you read it?

A. Well, yes. An Act to provide for the division of counties –

THE COURT: I can look at it.

MR. BLACKSHER: Judge, it's marked in there.

THE COURT: If that's all law I could let you all get together without taking his time afterwards, if that's all we're doing. It says for the election of three trustees therefor.

A. That's the '95 law. That's the one you're referring to.

THE COURT: I guess so.

A. The '93 Act is an Act to provide for election of members of the County Boards of Public Instruction and fix their compensation.

THE COURT: Which Act?

[67] A. That is '93, and the '95 one adds the trustees that you're talking about from the subdistricts.

MR. BLACKSHER: May I approach the bench, Your Honor, and shortcut this?

THE COURT: Yes. I would like, we're just talking about those laws and you all have them here and we can see what they say and don't have to take his time trying to fumble through and read those things.

MR. BLACKSHER: Would the Court permit to put in the record what it shows so there won't be any further consideration.

THE COURT: It will be fine. I'll tell you what; I'll let you go to noon recess and you all get together and there

should be no problem and if you have a problem, come to me with them and let me look at them. You all should be able to agree on what the laws say without taking the witness's time.

MR. BLACKSHER: Thank you, sir.

THE COURT: Cross examination now, Mr. Caton?

MR. CATON: Yes, Your Honor.

CROSS EXAMINATION

BY MR. CATON:

Q. Dr. Shofner, could we clear up one point, please, sir. Back in the late eighteen eighties, I guess it was, I believe you stated that's when blacks were [68] effectively disenfranchised. Is that correct, sir.

A. Yes, that's about right. The statutes that led to it were 1889.

Q. Eighteen eighty-nine?

A. Yes, sir.

Q. So I believe there were some, also some provisions in 1885, were there not, some provisions in that constitution that provided for the methods of disenfranchisement?

A. Yes, sir.

THE COURT: Mr. Caton, since he gave us that testimony it's now stipulated, I think, by all people, that as late as 1900 they were effectively disenfranchised.

MR. CATON: Yes, sir, I understand we stipulated that. I was just trying to pin it down a little bit more, if I could, Your Honor.

THE COURT: Well, all right, sir. I don't know, with that on the record I don't know why you need to come with any more, but go ahead.

A. The 1885 constitution provided the Legislature power to enact a poll tax requirement as a precedent to voting, and the 1889 Legislature did it.

Q. So would it be a fair statement then by the year 1889 that blacks were effectively disenfranchised?

A. Yes. The next statewide election suggests [69] that that's the case. Yes.

Q. So you would agree to the statement, I guess. A. Yes.

Q. Could I ask you one question in general, please, sir, getting back to your general method. You're what we call a historian and as I understand your answer to counsel you not only report facts but make judgments yourself. Is that correct?

A. Yes, sir.

Q. And what do you use to base your judgments on? A. All the evidence you can find on the subject.

Q. And that includes newspaper articles as well as books, periodicals, magazines?

A. Yes, yes. Government documents.

Q. What did you mean when you said oral history? A. It has been, it has become a feature of historical research in recent years. A man named Alan Nevins of Columbia University set up an oral history project and it's caught up all over the country now to, instead of waiting till somebody is dead and then seeking out their record, to interview people of importance and to get their testimony on the record and then this material is handled in, it's a very intricate thing. It has to be edited and the man goes back and approves or changes it and [70] he also controls when it can be used and where and that kind of thing. That's what oral history refers to. We've always, of course —

THE COURT: I think you've answered the question, Doctor.

A. Okay.

Q. So what we're talking about is somebody will interview a person that has knowledge of certain facts? A. Yes.

Q. And he will – he in turn write them down or pass them along orally to the next man? A. I was speaking of, directly to the former case. Interviews would be recorded at the time and transcripts would be made.

Q. So it would be a written synopsis of what a man said? A. Yes.

Q. And your newspapers, I believe you stated they're a major source of material in your research. How do you go about that? Do you just check the newspaper files? A. Yes.

Q. Of various newspapers? A. Yes. They've been saved from the earlier period just about like everything else, kind of spasmodically, [71] so we don't have complete runs of some and some have disappeared altogether, but there has been a kind of a scattergun approach to saving the materials and those that exist, yes, we just –

Q. So you can get what you can? A. You get what you can, that's correct, and if you're looking for a specific piece of material, of course you go to those dates, but I was mainly referring to the fact that in most of my research I've simply read the newspapers from beginning to end to get a feel for the time and that kind of thing.

Q. How do you go about choosing which newspapers, say the *Tampa Tribune* as opposed to the *Jacksonville Bugle?* A. In that particular case it was easily available

and it was not a particularly debatable point. It was simply direct reporting.

Q. As opposed to an opinion? A. Opposed to an opinion or editorial or something of that nature.

Q. Do you also sometimes check editorials for opinions? A. Yes, sir.

Q. And what credence do you normally place in them? A. It depends on what the issue is.

[72] Q. It depends on the issue? A. Sure. Newspapers, like law and custom, interact with the body politic that they serve. They instruct and they are instructed by.

Q. In your research do you fairly often run into these editorial type opinions from newspapers? A. On the editorial page indubitably.

Q. Do you find that the opinions sometimes vary from one paper to the next depending on who's writing the article? A. And also depending on the issue.

Q. Depending on the issue? A. On the particular issue we have here, not very much dissent from white newspapers.

Q. Do we not find quite often, though, that depending on who's writing the article you might have a different opinion on the same issue? A. When?

Q. Well, you've done the research. You tell me. A. Well, there's a different answer depending on—

THE COURT: He's already testified that there was pretty much unanimity.

Q. So your answer would be it depends on the issue? A. Yes. There was common agreement among

newspaper editors, white newspaper editors, in this early [73] period, about the necessity of white supremacy.

Q. Yes, sir, in the early period. Let's say, for example, we had a later period where maybe there was a little more disagreement. Would you expect to find perhaps different opinions from different newspaper editors depending on who's writing the editorial?

THE COURT: You're asking him what he might expect to find, sir? You're going pretty far out on that, Mr. Caton. Don't answer that.

MR. CATON: Well, the man has testified he has done research.

THE COURT: Yes, but you asked him what he might expect to find on his approach to research.

MR. CATON: I asked him about a different issue than the one he was particularly speaking to.

THE COURT: I've instructed him not to answer that question.

Q. Okay, are you familiar at all with the change in the electoral system made in the City of Pensacola in 1959? A. I have done no direct investigation of that. I've heard about it from other people.

Q. I believe you stated that the change in the method of electing school board members was in 1947 to make [74] them at large. A. Yes, nominating process. The nominating process.

Q. Yes, sir, the primaries. A. We all make that same mistake.

Q. We get confused. Did you or did you not state that there was any correlation between that and the end of the white primary in 1945? A. It certainly appears to be a correlation. The *Davis* case was decided in 1945.

Q. There appears to be a correlation? A. And the next legislative session was in 1947.

Q. This is something that you have studied and read and you've formed an opinion which says it appears to be? A. Yes.

THE COURT: Let me be sure about that, sir. From your testimony I gathered or I assumed, at least, that your opinion was based purely on that sequence of events and nothing else. Is there some other basis for your thought? A. Well, the entire framework of the mid-nineteen forties in Florida and the South. You had Strom Thurmond who broke away from the Democratic Party because the [75] National Democratic Party included a plank calling for a fair employment practices commission. At the same time there was a difficulty in whether they would be allowed to be considered a major party or not and therefore get on the ballots in the states, and the Legislature called itself or the Governor called it into session in September to provide for a specific inclusion of the States Rights Party on the ballot in the state, among other things.

CROSS EXAMINATION RESUMED

BY MR. CATON:

Q. So there are some generalities? A. Yes.

Q. Strom Thurmond from South Carolina and other things happening around the country, and you felt this may fall into that pattern? A. I think it's a little bit stronger than "may." I think it did, and the Legislature went to considerable effort to demonstrate that by allowing this particular party to get itself on the ballot so Florida Democrats who didn't wish to vote for Harry Truman would have an opportunity to express their thoughts.

Q. But you have no specific evidence other than your own conjecture? A. Well, the evidence I have is the calling of the [76] legislative session and what that Legislature did. That's what I meant by that.

Q. Was this a special session or a regular session? A. That is a special session, September, 1948.

THE COURT: The Legislature had a special session in 1948? A. Yes, sir, they called themselves in because under the election rules this States Rights Party didn't meet the standards necessary to get on the ballot and so they went to some extra effort to get them on the ballot that year.

THE COURT: Get who on the ballot?

A. Get the States Rights Party. It was commonly called the Dixiecrats, but the States Rights Party, I think, was the official title of it.

THE COURT: You're not talking about – how is that correlated to –

A. The correlation, sir, as I see it, sir, is this, another example of Floridians favoring white government and becoming disenchanted with the National Democratic Party, the solid South to which Florida has aspired for nearly a century as the white man's party. Now the white man's party is beginning to talk about fair employment practices commissions and antilynch [77] legislation which has been introduced in the House of Representatives since at least 1921.

THE COURT: Doctor, you're getting me a little confused. I thought you had said there was a correlation between the decision in 1945 and the 1947 change in the Florida Statutes and part of that reason for that was the special session. Yet you say the special session was after that.

A. The attorney asked me, though, if I made my opinion on the simple basis on the fact that *Davis* occurred in 1945, and the Minimum Foundation Law changed the nominating process to at-large, and I said there was more to it and this is the kind of thing.

THE COURT: The sequence we're talking about, these decisions or whatever it was came out in 1945, you said.

A. Yes, that was the Supreme Court.

THE COURT: Then in 1947 the Legislature changed it to an at-large? Is that what you're saying?

A. Yes.

THE COURT: But you also said something about a special session.

A. The next year.

THE COURT: In what year was that?

A. Forty-eight.

[78] THE COURT: All right.

A. That's what I meant. It's collateral. That's what you were asking, was there any collateral information.

CROSS EXAMINATION RESUMED

BY MR. CATON:

Q. You made a statement when Mr. Blacksher was examining you that around in the nineteen hundreds there were some more changes such that the Republican Party was no longer a threat to the Democrats. Would you elaborate on that again for me. A. Well, as blacks were disenfranchised there was no body of support for the Republican Party. There were a few hundred white Republicans in the state. The largest enclaves of them were

in Duval County and in Orange County. Orange had been populated by much more recent immigration and had a little nucleus of a Republican Party there, and Duval had one from, existing since the post-Civil War period, but basically the Republican Party was supported by black voters.

Q. Yes, sir. A. And when the black voters were prevented from voting, that's what I meant.

Q. Well, when did this become a threat subsequent to that time? A. There are people who would argue that they [79] haven't.

Q. Which people would argue that they haven't? A. The people who've been looking at the Legislature and counting how their numbers have gone down since 1967's high point. The 1928 election brought about an aberration, I think, in national, but certainly in Florida politics, because the Democratic Party, the Democratic Party voters in Florida were being asked to vote for a man named. Al Smith who didn't look much like their kind of man and they voted for Herbert Hoover, who didn't either, but he looked more like it than Al Smith, and except for that particular aberration in which no county, so far as I know, went for the Republicans by a majority, but where the Republican vote was increased considerably, except for that 1928 aberration the Republican Party has not become a major threat in a statewide election until, of course, Claude Kirk pulled off that 1966 event.

Q. So if they weren't a threat after early 1900 there was no need to pass any laws to continue to have that effect since there was no problem involved? A. No, that's what allowed the district election to be so convenient. You have local control.

Q. Your answer was no, that there was no need to? I'm sorry. [80] A. I said that's right, they didn't have to worry about an opposition party.

Q. Yes, sir. Okay, could I ask you concerning some of your testimony regarding lynchings and other violence. I believe you said this was legalized, the legalization of a custom. Could you tell me which laws and other legislation made these lynchings and violence legal? A. There was no law saying it was all right for one man to lynch another.

Q. What do you mean by this? A. I mean by 1915, beginning about 1895, a series of laws collectively called Jim Crow Laws, that's a fairly common term in our society and my profession, dealing on the one side with punishment for people who participated in integrated schools, to the forbidding of sheriffs and others handling prisoners from handcuffing blacks and whites in the same handcuffs to, in that 1907 session –

Q. What does this have to do with making lynchings legal? A. It had to do with it in that it left blacks completely separated from white society, whites and blacks in that state except in a master servant relationship could live out their lives without ever coming into contact with each other, and the state officials condoned [81] without law the lynchings.

Q. I think we're all aware that even the Supreme Court said separate but equal in the schools was legal. What I'm getting at is not that, but you, maybe I'm wrong, maybe I wrote this down wrong, but I understood you to say that these lunchings and other violence that Mr. Blacksher was asking you about, you said this was the custom that became legal.

THE COURT: No, sir, he didn't say that. A. That's not what I said.

Q. Well, I apologize.

THE COURT: He said it was condoned.

A. I had given the one example of Mr. Catts. I could give you several dozen more.

THE COURT: You've already gone over that pretty well for us. Go ahead, Mr. Caton.

Q. Could you again tell me what period of time your research covers mainly? A. My most extensive work has been in the period, the last fifty years of the nineteenth and first twenty of the twentieth century.

Q. So through about 1920? A. Eighteen fifty to nineteen twenty. I've done an lawful lot of reading before and after that but that's the area that I have done my publishing in mostly.

[82] Q. Has any of this research been specifically in the City of Pensacola or Escambia County? A. Not for that reason, but of course I have read the Pensacola –

Q. Not for the reasons that you've testified? A. No not for the reason of finding any specifically, in Pensacola and Escambia County, but Pensacola was a very prominent city in Florida during that period.

Q. We hope so. A. Right. It was. And of course the newspapers here and the shipping registers.

Q. I believe you did some research with black stevedores. A. Yes. That I ran onto when I was working on my Reconstruction book and also the lumber industry; I've done considerable work just on the lumber industry itself and they sort of crossed there in 1873 when –

Q. But that's, excuse me, that's pretty much the extent of your research done in Pensacola and Escambia County, is with relationship to black stevedores and lumberjacks? A. That kind of thing, but as incident to broader research.

Q. As incident to what broader research in [83] Pensacola and Escambia County? A. In the State of Florida, of which Pensacola is a contingent part.

Q. So the answer to my question as far as Pensacola and Escambia County is concerned, the extent of your research has been with some black stevedores and Canadian lumberjacks? The rest of your research has been in other areas? A. No, that is not true. There are others.

Q. Tell me about it. A. I can tell about Stephen R. Mallory, the Secretary of the Confederate Navy, who lived here and fought a duel with Mr. William Kirk, a newspaper editor, over some racial matters. Mr. Kirk chickened out so it didn't come about, but other things like that.

THE COURT: You don't have any other evidence of dilution in Escambia County other than what you've testified? A. That's right.

THE COURT: That covers it for you generally, doesn't it, Mr. Caton?

Q. Okay, thank you. was there ever any literacy test in Florida for the purpose of disenfranchising blacks to your knowledge? A. I don't think so. The closest they came was [84] the eight ballot box law which required a person to be able to read in order to cast his ballot but I'm not aware of a direct test like the Mississippi one.

Q. The eight ballot box law, you had to put your

ballot in the right box for the right candidate? A. Which might be inferentially a literacy test.

Q. When did that go out? A. Well, it was rendered kind of nugtory by the Australian ballot in 1895.

Q. The secret ballot? A. They went to the secret ballot, yes.

Q. That was put in, in 1895? A. Yes, The reason the eight ballot box law was no longer significant then was because the state began had printed their own ballots.

Q. Is it your opinion that the Australian ballot had any racial purpose behind it? A. I wouldn't think so. It didn't matter by that time, by 1895.

Q. Because by 1895 the blacks had already been effectively disenfranchised? A. Yes. We had good government then.

Q. Yes, sir. The poll tax, I believe you stated, was in effect from 1889 to 1937? [85] A. Yes, sir.

Q. Now, did that apply to a city election or county and school board or all of them or do you know? A. You mean the ending if it?

THE COURT: No.

A. It applied to registration for voting all the way.

Q. City as well as county? A. Yes.

Q. Could you be mistaken on that? A. Yes, I could always be mistaken.

Q. Was there a possibility that there may have been some other motives for the Legislature enacting these laws that you've referred to in the past, such as good government and business, anticorruption or other similar motives? A. Yes, sir. Rarely are you going to see a

group of, as of now a hundred nineteen men, pursuing identical motives. That's the nature of our process. Fifty percent plus one is what it takes in both houses and that usually takes some back scratching and very often you find multiple motives.

Q. Would you say it was a fair statement that these factors were substantially motivating factors in some, some or all of this legislation?

[86] THE COURT: What factors?

Q. The factors I just listed, good government, business, anticorruption or other similar type of motives. A. There's no doubt by that there were people who were interested in good government and many, many –

Q. Is the answer to my question yes or no? A. It's, "yes but."

Q. It's, "Yes but." Okay, now, go ahead. A. The "but" is that many people until very recent years have equated good government and white voting, and I would suggest that that leading history of the Democratic Party by Cash in '36 would be a case in point where he makes it quite clear that that was that there was a correlation between the whites only voting and good government.

Q. These devices such as the eight ballot box, etcetera, was there any significant white opposition to these laws that were passed? Was there debate? A. Not much in Florida. There was a dispute in the 1885 constitutional convention over a thing called the McCaskill Amendment where some people in Florida wanted to go further than just a poll tax and make criminal misdemeanor types, that kind of thing –

Q. Are you saying it was not significant? [87] A. It was not significant in that a majority of the convention

thought that this was not necessary and they didn't pass the McCaskill Amendment.

Q. Okay, if I could, Dr. Shofner, you do recall back on March the 2nd when we took your deposition at Mr. Ray's office? A. Yes.

Q. If I could, let me read a couple of questions and answers to you, and if you would, tell me whether or not you made those statements. Question. "Are you aware of any significant –

MR. BLACKSHER: May it please the Court, would counsel, give us the page and line number.

MR. CATON: Page 54, line 18.

MR. BLACKSHER: Would the Court allow me to give the witness his deposition so he could read this?

THE COURT: He's going to read it to him.

Q. I'm going to read it to him. "Are you aware of any significant and influential white opposition to these devices that we have talked about?" Answer, "There was some." Question, "Would you categorize this as significant?" Answer, "Yes." A. Now, what devices are you talking about?

Q. The same ones that we've been talking about all morning. [88] A. I don't believe now that the context of those two questions, you know, in English grammar we have this faulty antecedent thing and I'm not sure our antecedents are correct there.

THE COURT: Mr. Caton, it was not clear to me that that was exactly the point we're talking about either.

MR. CATON: Okay.

THE COURT: If you want to go back into that deposition.

A. I'm reading the deposition for correction now and I'm to page 46 so I couldn't really attest to it.

Q. Let's go to a couple of questions prior to that. "Are you aware of any of them who in debate supported the —" Answer, "They participated vigorously in the debate but the poll tax thing —" Question, "Yes." Answer, "I'm not aware. I don't think they did." And then some other questions, so we're talking about the same type of devices. A. Yes, it sounds like agreement to me.

Q. You seem to have stated then there was some signficant white opposition. A. Okay, now you're talking about that, a period a little bit beyond that when, and I believe this was Mr. Ray's questioning, he was talking about the Populists, who really hadn't gotten on the map by 1889, although they were pushing in the wings pretty [89] hard, and there were some Populist type white people who, I don't know that they were opposed to the poll tax but they differed from the Democratic majority in the state and they did protest but they didn't amount to much. By 1896 they were all gone.

THE COURT: All right, you want to go ahead, Mr. Caton.

Q. Well, you're saying now that there was no significant white opposition, is that correct? A. To poll tax vote requirement?

Q. To poll tax, eight ballot box.

THE COURT: Significant white opposition, you say?

MR. CATON: That's correct, your Honor.

THE COURT: Is that what you want to know?

A. That's what I am saying.

Q. Was there any black support of these types of devices? A. Not that I'm aware of, not much anyway.

Q. Reverend Kershaw? A. Joe Lang Kershaw, which is erroneous in the deposition –

Q. If you could, I realize that you know a lot about these things. If we could shorten the answers a little bit, did he support them? [90] A. Well, you can't always give short answers to those long questions.

Q. I think it's a pretty short question. A. That's the kind of questions I use to get the kids to do a lot of writing.

THE COURT: Doctor, he wanted to know, he asked you a specific question, did so and so support this poll tax. You can answer that. A. I do not know whether he did or not.

THE COURT: Then that's all we need to answer that question.

Q. Okay, you don't know.

THE COURT: That's what he says. Go ahead.

Q. This phenomenon of at-large elections versus district elections, when did it enter into Florida politics in the primary, I believe in the primary, you said, 1947 for school boards and counties? A. You mean the change from district nominating to at-large nominating?

Q. Yes, sir. A. Forty-seven with respect to the school board, fifty-four on the commissioners.

Q. How about in the rest of the country? Do we have this same phenomenon going on or do we have district elections, at-large elections? [91] A. It varies.

Q. It varies. So we may have in 1947 a state, New Hampshire, that would be going to an at-large election and Massachusetts may be going to a district election? A. It's perfectly possible.

Q. How about the change in basic forms of government such as the commission and city manager form of government as they relate to Pensacola and Escambia County? Are you familiar with that? A. All I know is that the first county, city commission form of government, was enacted in Green Cove Springs in about 1913. Consequent to this particular form beginning in Galveston, Texas, about 1900 or 1901, and generally being a fad for reform in city government until the city manager system became a new fad in about 1917.

Q. Do you know what the purpose of the city manager form was? A. I know what it was stated to be, yes. The city manager –

Q. Isn't that what most of your testimony is, what somebody else has stated? A. Yes.

Q. Okay. Well, let's go ahead and continue then, please. [92] Well, I was intending to.

Q. Okay. A. That is what I was going to do until you stopped me, and your question was did I know what was involved in the city manager system.

Q. Yes. A. Okay, apparently the city government of Galveston broke down in 1900 when a huge flood occurred so they decided –

THE COURT: Is that what you want him to tell us about?

Q. Not the total history, just the purpose of the city manager form of government. What was the reason for changing from one form to another? A. It's not going to make much sense but the idea was the commissioners having been specialists in their respective fields, sewage, what have you, didn't, it didn't work out too well. The combination of political know-how and expert knowledge

in specific areas was frowned upon and the city manager idea was one where you have an appointed executive who can be the specialist in city government and the commissioners can be or council members can be whatever.

THE COURT: Set the policy? A. Right, be the legislative –

[93] THE COURT: That was the reason or the answer for it along the way?

A. Yes, sir.

THE COURT: That would have nothing to do with race, would it? A. No, sir.

Q. Do you think that form of government has anything at all or any correlation to do with an at-large election or district election? A. I confess I just don't know.

Q. Dr. Shofner, would you agree with me that this regional and national histories that you've given us, histories of politics and voting laws, would you agree that they include many broad generalities, complexities and abstractions that might not apply to any particular community? A. I'm not at all sure I understand that.

MR BLACKSHER: Your Honor, I object to the question unless we identify what specific part of his testimony he's talking about, since part of his testimony was directed to the State of Florida's policy.

THE COURT: I can always hear you better when you talk if you stand up.

MR BLACKSHER: Excuse me.

THE COURT: He was not asking him anything from [94] his deposition. He was asking him a question, but it was such a general question I'm not sure. Did you understand the question, sir?

A. No, and I'd have to take issue with what an abstraction and generality, that kind of thing, is.

THE COURT: Repeat the question for us one more time if you feel the need to pursue it, Mr. Caton.

Q. Yes, sir. My question was would you agree that the histories that you've given us of politics regarding regions such as Florida or national, or areas such as the South, this type of history, does it not have a lot of generalities in it and complexities in it that, such that this general philosophy or whatever the trend is might not apply to a given smaller community such as Pensacola or Escambia County? A. Well, that would be true of anything besides a simple direct declarative sentence.

Q. The question is not of anything but of what you've been studying. A. But not only was Pensacola a part of the State of Florida, Pensacola and Escambia County—

Q. Could you answer my question, please, sir. A. I am answering your question.

Q. Could you answer it yes or no and then expound? A. That question does not have a yes or no answer.

[95] THE COURT: Mr. Caton, let him go ahead. He's using the approach of, "Yes, with this explanation," and trying to do that.

A. It's not that simple. What I was going to say is not only was Pensacola and Escambia County part of Florida but was a leading part and I can, Senator John Beard and his Representative colleague, R. P. Reese, were the initiators of many bills, separate streetcars, separate waiting facilities, separate rest rooms, which came up in the 1907 session right along with the —

Q. I think we're getting a little off the track. A. I'm sorry. That was the way I understood your question. You

said could there be something, a generalization about the South.

THE COURT: Mr. Caton, let's let him try. I thought you asked him about that way back there too. Try it again, Mr. Caton, if you feel there's something you want him to pursue. What is it you want him to tell you?

Q. What I want to know, Doctor, you've given us, you've told us you haven't studied Pensacola and Escambia County. A. No, I have not.

Q. You studied the State of Florida, and Pensacola and Escambia County are part of the State of Florida, we [96] certainly agree with you there. Pensacola and Escambia County is also part of the South, so to speak, although of course there are some other questions. My question to you is the general trends, philosophies, whatever, concerning government that you've given, that concern an area of a regional area, do they necessarily apply to all of the cities within that region, and counties? You give an example of Jacksonville in your deposition that you said was different. A. Yes, I realize and I thought I was going to get an opportunity to explain that, but of course you have the right to stop asking questions and you did. Pensacola was, and I've done enough reading in the literature about this town and this county to say this, was very much a part of Florida and the South and was not inconsistent with the generalizations that we've discussed here today regarding racial patterns.

Q. Pensacola and Escambia County were not inconsistent? A. They were right in the mainstream.

Q. Yes, sir. How can you state that when you haven't done any study of Pensacola? A. Because I didn't say that I have not done any studying here. I said I had never

pursued a topic that dealt directly with this local area particularly. I have [97] read the *Pensacola Journal* and the *Pensacola News*, the *Pensacola Observer*, all of which are nineteenth century newspapers, and we have considerable runs of them. I've read even some documents, the National Archives is filled because of the naval facility being here, filled with all kinds of information. The Department of Justice, for example, and from the Naval Shipping Board and all these things.

Q. These were things in addition that you've done that you didn't tell us about a little while ago? A. I thought I had but I guess I hadn't. I didn't pursue it.

THE COURT: You've answered his question, Doctor. Go ahead, Mr. Caton.

MR. CATON: Your Honor, there's a few more questions that I think it would be more appropriate for the attorneys for the county and the school board to continue at this point.

THE COURT: You mean you want to come – oh, you're finished

MR. CATON: Yes, Your Honor.

THE COURT: All right, who's next?

CROSS EXAMINATION

BY MR. LOTT:

Q. Dr. Shofner, I represent the county commissioners [98] and I would like, if we could, to confine your testimony at this point about the questions I'm going to ask to the county commission form of government in Escambia County, and I believe from my notes your testimony was to the effect Mr. Blacksher asked you

whether or not the changes from single-member districts in the nominating process to at-large nominating process for the Democratic primary after 1945 was in any way racially motivated, and my recollection is your testimony was, "Yes, it was." Is that basically correct as to the county commission? A. That's basically correct as to county commission. If you accept my other proposition that it was not the only cause.

Q. Okay, recognizing that it was not the only cause I would like to go into some detail as to the background information that gives you the basis for your opinion. A. The background information to it, sir, is everything that I've said this morning.

Q. Well, in 1945 the courts knocked out the white primary. Now, what, events after that lead you to conclude in any way that the change in county commission method of election was racially motivated?

THE COURT: Other than that, now? Is that what you mean?

[99] A. Other that what?

THE COURT: He said after that time, what, if any events after that.

Q. After 1945 what, if anything, leads you to –

A. The entire pattern of resistance to black registration, the assassination of Harry Moore.

THE COURT: After 1945?

A. Yes, sir.

THE COURT: Nineteen forty-seven?

A. That was '51 when that happened.

THE COURT: Well, the county commissioner thing was 1947?

MR. LOTT: No, sir, it was 1954.

THE COURT: I see.

A. And the Dixiecrat movement, the resistance to the *Brown* decision, the entire pattern of behavior.

Q. In other words the fact that there was racial segregation in the South leads you to conclude that anything that in your opinion disadvantages blacks was done for racial motive? Is that what you're saying?

A. No, I'm not saying that.

Q. Would you clarify it for me then?

A. I'm saying than when the 1954 decision was handed down that there was considerable indication that with the outlawing of the white primary a decade earlier [100] the white primary might not be as, I mean the idea, the prevention of blacks from participating in the election that counted, the democratic primary, might not be as pertinent.

THE COURT: Was this change in 1954 before or after the primary decision?

A. What?

THE COURT: The change in county commissioners' districts in 1954, did it come about before or after the *Brown* decision?

A. The *Brown* decision, it was all about the same time.

THE COURT: That is the decision we're talking about, isn't it?

A. Right. And as a matter of fact this was three or four months before.

THE COURT: This change?

A. Yes, I think February.

THE COURT: Well, then obviously it couldn't have been affected by the *brown* decision, could it, in making that change?

A. No, sir, but the kind of thing that caused a reaction to the *Brown* decision, it could have been affected by it.

THE COURT: How can it be reaction to the *Brown* [101] decision when the *Brown* decision had not been announced?

A. That's not exactly what I'm saying.

THE COURT: I don't understand.

A. The man asked me if I recall why I was saying that race had something to do with the reduction or the change in the election from districts to at-large in 1954, and my answer was the entire pattern of Southern, Florida, white response to these kinds of changes, including resistance to voter registration, which was before; including the kind of action that attempted to allay the attorney general's report, to allay the implementation of the *Brown* decision. yes, it came afterwards but it came within the same context. That's all I'm saying.

Q. What is the basis of your determination that it came in the same context? In other words how can we tell that the change in the county commission election procedure in 1954 was in any way connected with other events that were happening in the country at the time? Have you made any independent inquiry into that? A. Into what?

Q. Into whether or not the county commission change in form of government in '54 was in any way related to the other events that might have been happening in the coun-

try at that time. [102] A. That's all I do. If you're talking about some kind of statistical study, I've not done that.

Q. Well, have you made any historical study? A. Sure.

Q. As to the 1954 change in the method of electing county commissioners? A. I've read the same kind of sources that I always read and it suggests to me that whites who were in control –

THE COURT: I don't believe he's understanding your question. He wants to know if you've made a study, I think this is what you're trying to, Mr. Lott, to determine whether there were any other motivations other than race. A. Well, there were.

Q. No, sir. No, sir, what I'm trying to find out is whether the witness has made any historical inquiry into the particular facts surrounding the change in county government from districtwide, from single-member districts to at-large nomination of county commissioners in '54. Have you made any historical study of that? A. Because of that and the other things going on around us at that time I've read considerably in the public record, newspaper, public documents, the Journal of the House and Senate.

[103] THE COURT: You don't seem to be getting very far here.

A. No, I can't pin this down and I don't think it's fair to ask this because the general climate of opinion, the responses to it, are what I'm here for, and to that –

THE COURT: Well, you talked about other things motivating. What other things motivated this change in 1954 that you know of?

A. There were some people who thought that the ward system had become reprehensible in a couple of communities, and I think this one, but I'm more informed on Hillsborough County where you have a much more complex ethnic group there. And that's the kind of thing I was referring to. And twenty-nine counties had already gone to at-large by special legislation by this time.

Q. What was the motivation for those twenty-nine counties? A. Different things.

Q. Were they related to implementing what would be considered good government, progressive type change in government? A. If you accept good government, progressive type, as the way I define it here, yes.

Q. Are you aware of the particular way in which [104] Escambia County's type of nomination was changed? A. I've read the transcript.

Q. How was it accomplished? A. It had to do with a member of the commission who apparently didn't like the way the voting was going on the commission and she had instituted suit to broaden the franchise to at-large on the grounds of good government.

Q. An individual county commissioner, are you saying, or an individual citizen? A. I was under the impression she was a county commissioner but it may have been a citizen.

Q. But someone brought a suit, and what was the disposition of the suit? A. It was, her contention was upheld that the 1907 law providing for district selection of party nominees was unconstitutional in that it conflicted with the 1900 constitutional amendment and this was upheld in an amazingly short time by the Supreme Court.

THE COURT: This was a suit just before 1954? Not

that suit you're talking about earlier? This was another suit? A. I think it started in '53 and it was decided in February, '54.

THE COURT: I suppose you all know about that.

[105] A. I believe that's the one you're talking about, *Ervin vs. Richardson,* I assume.

Q. Wasn't that suit the direct moving factor that caused the change in the county commissioners' nominating procedure in Escambia County? A. I suspect it was.

Q. It was as a result of that suit and the orders entered by the court in that suit that the county commissioners were changed from a district to at-large election system, is that right? Is it your contention that suit was racially motivated? Do you have an opinion whether that suit was racially motivated? A. I think the point is that it did not upset the desires of the people who were in control in the county at that particular time. I think that, however, whether or not it was initiated for this reason, it served them very well.

Q. But you don't have any evidence to form an opinion it was racially motivated in its initiation, is that correct? A. I have, as I've stated several times, extensive information.

Q. Excuse me.? A. I have extensive information that that is the kind of society in which this state lived in the middle nineteen fifties.

[106] THE COURT: Yes, sir, but his point is that we may have had that kind of society but he's talking about the specific suit, whether it was or was not related to racial motivation.?

A. Directly, that's right.

THE COURT: So it was not there, and to follow you on that thing, everything was racially motivated, therefore everything is racial, but all you're saying in the particular thing, as I gather, is that it was not in fact racially motivated.

A. Not instigated, no, sir.

THE COURT: As far as the people in power were concerned it was all right because they wanted a court decision to comply and that's all they were doing.

A. That's right.

THE COURT: In that particular change. That's what you're saying really.

A. That's what I've been trying to say.

THE COURT: It sure took us a long time to get to it, Doctor. I didn't understand your testimony in that respect before but I do understand it now. You said this particular thing was not motivated, we had a general climate going to everything.

A. Yes.

[107] THE COURT: But this particular thing, going from single to at-large, had no racial overtones other than what we had already here, I gather is what you're telling me.

A. Yes, that's right. However, the field in which I am is not an adversary one and I realize we've got to narrow it down in here in order to –

THE COURT: All I'm saying to you, Doctor, if we had the racial climate and we had single-member districts before then, then that was racially motivated?

A. Yes, sir.

THE COURT: And if we had the other change you're saying it's racially motivated and I can't follow that.

A. I'm not saying racially motivated. I'm saying it certainly was consistent with the kind of protections these people were seeking.

THE COURT: Equally so you tell me really what was involved there was a court decision and that's all.

A. I said that earlier.

THE COURT: I think I understand. Go ahead.

CROSS EXAMINATION RESUMED

BY MR. LOTT:

Q. Dr. Shofner, are you familiar with what the duties of county commissioners were during the period, say, after the 1885 constitution and up through 1905, 1910? A. Yes.

[108] Q. What were those duties? A. They ran the county. They were the legislative and executive departments of the county government. You want specifics?

Q. Well, if you could give them to me. A. Well, I can give you some, I think. They controlled the election machinery. They decided where the precincts were. They staffed the precincts with personnel at election times. They, with some assistance from road districts, they maintained the roads in the counties.

Q. Was that a principal concern of the county commissioners in the 1900 era? A. Roads?

Q. Roads. A. Yes, except they divided the county up into road districts which conformed usually with the old militia beats and the road supervisors in the districts actually did the work but they came before the county

commission for approval of county roads and all of that, and of course the end of the period you included there, I think you said 1910 or so, didn't you?

Q. Yes, sir. A. The county commissioners in some counties, [109] this happened at different times in different counties, were beginning to take over road crews and establish, buy mules, this kind of thing, so roads were becoming a major consideration. At the beginning of the dates you specified it was a law in Florida and the county commissioners enforced this, that –

THE COURT: I believe, I think he's gone beyond your question, has he not, sir, or is this what you want?

MR. LOTT: No, I think he's fixing to get into what I'm asking about. I'm sorry.

THE COURT: Go ahead.

A. I'm just having to kind of search and find out. They had come in this regard from a requirement that everybody in the state put eight days on the road to a position of taxing for roads and began to go into the business of roads. They handled the county poor farm. Some counties established poor farm where they put indigents. They didn't do much about it but they were in charge of people who were mentally deranged and sometimes they sent them out, they would say, "This guy looks like a good fellow to take care of a fellow who's mentally ill so we'll pay you three dollars a month or eight dollars a month," or whatever, that kind of thing. There was a county dole and still is in some counties here where indigent people got a few bucks from the county right along. [110] So those are the kinds of things they did.

Q. Okay, are you familiar with the duties of county commissioners in Escambia County today or since – A. Just in a general way, that's all, yes.

Q. Would you say the duties have changed substantially? A. No, I think society has changed substantially and of course we now look to government for more things and of course the county commissioners do a lot more things but that's not so much because their duties have changed; it's because the needs of the society we exist in has changed.

Q. Would you say that the duties performed by the county commissioners in a Florida county today, particularly Escambia County, are substantially different than they were in 1895 to 1900, 1905? A. Yes.

Q. In character? A. No, not in character, but they're different in that, good Lord, the budgets they handle now as opposed to then.

Q. But they're providing the same kinds of services? A. The same kinds of services, not the same services. Now, I'm not saying that.

[111] MR. LOTT: That's all the question I have. I think Mr. Ray has a couple questions.

THE COURT: How long will you be, Mr. Ray?

MR. RAY: Just a few minutes, Your Honor.

THE COURT: Go ahead with your cross examination before we take a lunch break.

CROSS EXAMINATION

BY MR. RAY:

Q. Dr. Shofner, my name is Lou Ray and I represent the school board. I have a few questions to ask you about your testimony concerning the school board. First of all am I correct that you testified by 1889 blacks in the State of Florida had effectively been disenfranchised?

A. No, I said that the legislation which led to effective disenfranchisement was enacted in 1889. Of course –

Q. So the following election – A. Yes.

Q. Evidenced to you that they had been? A. Yes.

Q. Disenfranchised by that time? A. In considerable numbers.

Q. And that following election took place in what year? [112] Ninety, 1890.

Q. If that's the case, on what facts do you rely to, for your opinion that the 1893 change in the school law was racially motivated? A. It's the reverse of that, actually. By 1893, there being less likelihood of an actual contest for office, this likelihood had been removed, and the people who sat in the Legislature in 1893 felt free to go ahead and make it democratic.

Q. So there was no racial motivation, no racially discriminatory purpose attendant to the 1893 law in your opinion? A. That's right, but that doesn't leave a true picture of what I'm saying.

Q. You're giving the reverse side of the coin, aren't you? A. Yes, sir.

Q. But the answer to my question – A. Yes.

Q. That there were no racially discriminatory purpose in the 1893 law is correct? A. That's why the appointive provision of 1889 which protected against that threat was removed in 1893., It was possible to remove it in 1893.

Q. By the same token the 1895 law changing the [113] school law in 1895, there was no racially discriminatory purpose attendant to its adoption either, was there, Dr. Shofner? A. No, but the law just before

that, in the session laws of 1895, the one that precedes it providing for punishment for anyone who operated an integrated school, seems to be. Those laws passed one and two in order.

Q. Let me direct your attention to the laws I want you to address yourself to. I'm talking about the laws that changed the form of government in 1893 and 1885.

MR. BLACKSHER: Objection, Your Honor. There's no evidence that there was any change in the form of government in 1895, and we'll straighten that out at recess.

THE COURT: Mr. Ray, on my notes I wonder what you're talking about. I see no relevance.

A. You mean the provisions for subdistricts? Is that what you're talking about?

Q. I'm talking about the laws changing the election method.

A. That's where they allowed the local districts below counties to come in.

MR. BLACKSHER: The trustees.

A. Yes, but he '93 and '95, I'd be willing to [114] say the same thing stood behind one that did the other.

Q. So, okay, in '93 and '95 you're willing to say there was no racially discriminatory purpose attendant to the enactment of those laws?

A. Because there was no need for it.

THE COURT: Because there was no need for it.

Q. All right, am I correct it was your testimony there was not another change in the laws with regard to school boards specifically until 1947? A. Nineteen hundred seven.

Q. Nineteen hundred seven. What happened then? A. That's when they went to district elections of the County Board of Public Instruction.

Q. Okay, and then the next change after that? A. That system was continued in a major revision of the school laws in 1939 and then the next change with regard to what we're talking about was '47.

Q. That's what I mean, the only change.? A. Yes.

Q. Between '07 and the present was '47? A. Yes.

Q. Are you familiar with the Minimum Foundation Program as that law has come to be known? A. Well, I'm not as familiar with it as that [115] professor from Florida, Mr. Johns, who wrote it, but I'm generally familiar with it. I'm generally familiar with the fact it was never fully implemented and that kind of thing but there's a lot about it I don't know. It was a very large law.

Q. Have you read it? A. Good Lord, not all of it.

Q. Do you know – I believe you testified that you considered it to be a major overhaul in the system of state financing of public schools. A. Well –

Q. And general school law, did you not? A. I did. It was really kind of an aside but, yes, I think it was because the school population of Florida had literally exploded in the four or five years just prior to that and there was a, the earlier Legislature had gotten through because there was surplus funds left over from World War II but there was a tremendous need to do something about additional kinds of funding for the school system and the idea was undertaken by the state that the responsibility was assumed by the state to provide a minimum foundation in that poor counties would be given the kind of aid that was necessary to maintain a certain level of funding. That was the general idea.

[116] Q. What sources, if any, have you consulted to learn about the Minimum Foundation Program and its history and its derivation? A. Well, I've read that citizens report that was presented to the Legislature just before that and I've read in and out of the law. I just simply have never sat down and started at line one and read it through.

Q. Do you know how long the Minimum Foundation Program as it is known now was on the drawing boards prior to its enactment in 1947? A. No, I really don't.

Q. Do you know how long the problems that the Minimum Foundation Program attempted to address were existent in this state, how long before the enactment of the law? A. Well, I suspect they'd always been here since the state assumed responsibility for public education. There was a major amendment in 1926 that put the state in the business of general funding and I think that was about the next major change since 1926 that I'm aware.

Q. We always had the problems, I would agree with you, Dr. Shofner, but I mean the accentuation of these problems, the exploding population. A. I had just been given to understand from what I had read and heard that the tremendous increase in [117] immigration into the state consequent to World War II and the fact that the last governor before the war, Fred P. Cone, who campaigned on a premise which a lot of people would, I'm sure, like to see, "Let's see how much money we have and then make our appropriations on that basis rather than deciding how much we need and going to find the funding," the fact is that Fred Cone's administration had rejected a lot of federal aid for buildings which would have been otherwise available to him and that put the state a little bit behind its population growth before World War

I, and then you have a tremendous influx of people immediately after, the GI Bill which put a lot of pressure on the higher-up colleges, and that's the general impression I've had and I confess that's about it.

Q. Dr. Shofner, you've given me, I think, a good explanation of what was behind the Minimum Foundation Program and its enactment and the problems that developed and when they developed that caused it to be enacted and you did not mention in that explanation anything about the courts holding the white primary to be illegal in 1945. Was that in any way connected directly or indirectly to the establishment of the Minimum Foundation Program? A. It seems to me it was very easy to make that little one-paragraph change in the entire law. There was [118] no major discussion on it. As far as I know there was no debate.

THE COURT: You say the change was a part of the Minimum Foundation Program? A. Yes, it was just in that particular paragraph or subparagraph, I've forgotten which one it was, the 1939 law in that portion was changed.

Q. So it is your testimony that that portion of the Minimum Foundation draws or is directly correlated to the 1945 decision? A. I'm saying that nothing had happened between 1939 and 1947 except the Texas vs., *Smith vs. Allwright in Texas, and the Davis vs. State of Florida* in Florida with respect to the nominating process for school board members. And that's what I'm saying. The timing is strongly suggestive.

Q. So you assume from the context in which, the time in which the change took place – A. Maybe deduce would be better.

Q. Deduce. But do you have any other sources that you have consulted that you can offer in support of your deduction that that change was racially motivated? A. No one has told me specifically that that was the reason for it, no

Q. No one has told you that? [119] A. No. I've not asked anyone, however.

Q. Has anyone, has any source supported your deduction in that regard? A. Well, just about everything that's been written about the state in that period suggests that that's here again the general context that I suggested was it, and as far as the direct tie, you're going to find that. It doesn't exist.

Q. You're not going to find historical suport for a direct correlation or a tie, are you, Dr. Shofner? A. Not in the judicial sense at all. Historically, yes.

Q. Historically, yes? A. Yes.

Q. Tell me what sources support that? A. I've just gone over it.

THE COURT: I think, are you talking about all your general testimony? A. Yes, that's all. Yes.

Q. You're saying, "Refer to my general testimony. That supports it. It took place in that time period; therefore that must have been the purpose." A. I didn't say it must have been the purpose. I said it was a purpose.

Q. Are you familiar with the people, the [120] legislators and others close to the education scene at the time who were responsible and instrumental for the adoption of the Minimum Foundation Program? A. No. The only one I knew is deceased. I can't even think of his name now. He was from my region there. I checked this out, as a matter of fact.

Q. Assume for the minute, if you will, that a legislator of the time by the name of Leroy Collins was instrumental in enactment of the Minimum Foundation Program. Would you ascribe to him that motive? A. Well, in 1954 as Governor of the state he avowed to the body politic to do all he could that was legal to preserve the time honored institution of white supremacy, segregation.

Q. So you would ascribe that motive to him? A. I don't think it's doing a disservice to an honorable man that changed his mind to say that he was part of his community at that particular time.

Q. Fine. I knew that you knew that he had said that in 1954. Did he make any such statements in 1947 at the time of the enactment of the Minimum Foundation Program? A. I doubt seriously if there was any need for him to. It hadn't risen to the level of expression by that time.

[121] Q. I'm going to wrap this up, Dr. Shofner. Is it not implicit in your testimony that in your opinion at-large elections disenfranchise black voters? A. Currently.

Q. Yes.

THE COURT: Say that again. Will you repeat that question?

Q. Yes, Your Honor. Is it not true that it's implicit in your testimony that in your opinion at-large elections disenfranchise black voters? A. No, but I think it is implicit that it helps to dilute the effectiveness of black votes still. And that's, I think that is implicit in what I'm saying. I would like to make it implicit.

Q. So it is, the answer to my question is yes? A. (The witness nodded in the affirmative.)

Q. Finally, Dr. Shofner, you testified to your findings and feelings of the political mood of the state during this entire period of time and I believe you testified that that would be a mood that would be prevalent here in Pensacola just as it was throughout the state. A. I think so, yes.

Q. Fine. Do you, sir, recognize as authoritative the works and writings of a historian by the name of [122] James R. McGovern? A. I've read the manuscript and he asked me to read it before publication. I made some, I had some reservations about it, which I don't know whether he incorporated them or not. But I don't know specifically what you're speaking about but I am familiar with it and I have immense respect for Dr. McGovern.

Q. Well, do you recognize this manuscript or this book? A. I'm aware that that's the book that came from the manuscript, yes.

Q. You recognize it as being authoritative treatment of local history in the period of 1900 to 1945? A. With some reservations that I'd have to produce. I don't recall now, but I sent him a critical commentary and I would certainly have to refer to that before I could –

Q. Do you recall offhand what those reservations were? A. No. I remember the one thing, I asked him, "Why don't you bring it down to the present," and he said he thought that was enough for one volume and that was a legal, I mean legitimate breaking-off point there. But I've forgotten now what. I really have.

Q. Do you recall any other reservations you might [123] have had with regard to this manuscript? A. No. I think he's a careful worker, if that's what you mean.

Q. I understand. But is it your testimony now that

notwithstanding that you still are not ready to adopt this work as an authoritative work on Pensacola history during the period 1900 to 1945, that you're not willing to recognize it? A. I think it's a general overview which shows the growth of a port town from a very infant sort of a rural place to what he calls a metropolis in 1945. It's a general overview.

Q. Not an in-depth historical study but a general overview? Is that the qualification? A. Yes, that's the qualification I'm trying to make. It can't do that sort of thing, I think.

Q. Dr. Shofner, let me ask you this. Would you just read the first sentence on the very first page of the introduction, the second paragraph. A. Let me get my glasses. Where it's lined there?

Q. Yes. Read that first sentence. A. I don't quarrel with that.

Q. Please read the first sentence. A. "Pensacola, Florida, is not a typical Southern city."

[124] Q. You do not quarrel with that? A. In the sense he means it. Would you connect the second sentence to it? He's talking about the fact that it's long been a military center and –

Q. Dr. Shofner, did you state that you do not quarrel with his statement on the first page? A. Yes, sir.

THE COURT: Mr. Ray, let's don't take the statement out of context.

A. I said I did not quarrel with it.

THE COURT: It could mean many things. A. Okay.

THE COURT: Just a minute, sir. Are you trying to get into something in that book that shows it's not a typical

Southern city in the sense it has less racial motivation or something?

MR. RAY: I'm asking him whether or not he agrees with the statement by that, the historian James R. McGovern, as stated here.

THE COURT: My point with you, sir, is that I think all of us could agree that perhaps Pensacola is not a typical Southern center but the question is whether it's not typical of the way you are seemingly implying or something else?

A. I don't understand

[125] MR. RAY: Dr. Shofner would like to have you think that, sir.

THE COURT: What is the second sentence?

A. Okay, the first sentence, "Pensacola is not a typical Southern city. The fact that it was a port and a military base accounts for its rich differences and thus invites attention to the actual mosaic often conveniently described as the New South."

Q. Do you disagree with that?

A. No.

MR. RAY: No further questions.

THE COURT: Any redirect?

MR BLACKSHER: No redirect at all, Your Honor.

THE COURT: This means this witness is excused from further attendance, hearing no objection. Doctor, you're excused from further attendance.

* * * * * *

TESTIMONY OF DR. GLENN DAVID CURRY*

[250] GLENN DAVID CURRY, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

* * *

[306] Q. Let me ask you this now. Does a regression analysis, as I understand, is a measure of the best straight line analysis of comparison of two variables? Is that correct, sir? A. Ordinary least squares is what this technique is called, the simpliest form of regression. There are more complicated forms that could get the "r" square higher such as a whole set of quadratic regressions and orthogonal polynomials.

Q. Suffice it to say, though, in this case in one particular regression analysis you're comparing two variables at one time, are you not? [307] A. For straight line, yes, sir.

Q. Is qualification of a candidate a variable in an election or in a voting issue?

Q. Qualification of a candidate? A. Yes, sir.

A. It sounds like a political science question. Do you want my opinion as a citizen?

Q. Yes, sir. Does qualification of a candidate strike you as a variable to be considered in analysis? A. When I vote, I vote on qualifications. I don't vote as an expert.

THE COURT: You're talking about things you read in an out?

A. Yes, sir.

THE COURT: But you did not and could not take into these things the fact that different candidates have dif-

*Transcript pages 251-57, 261-63, 271-73, 299-303, 341-44 of Dr. Curry's testimony were accidentally omitted in printing but are included in Volume V to this Joint Appendix at 1267-83.

ferent appeals unrelated to race or anything else, particularly to certain segments of voters?

A. Yes, sir.

THE COURT: That's something you could not take in account in analysis?

A. Yes, sir, and if we could take it in account we would have to assume it fits in what's left over after the percent black, which in some cases is 90 percent, so it would fit in the 10 percent.

[308] THE COURT: Not necessarily. Wouldn't a black person vote for a white person and vote not because of race but qualifications, and in fact a white person would do the same?

A. Yes, sir.

THE COURT: In fact we've had a couple of races in this county where apparently that's happened.

A. Yes sir.

THE COURT: It's not necessarily what you said; it's just simply a factor you couldn't take in account?

A. It's a factor I couldn't take in account but in those races where you have a 90 percent "r" square that is so powerful that it is showing in that case they were voting on the basis of race.

THE COURT: All right, sir. Go ahead.

Q. Does it not consider, does it not show that only among the variables which were considered — A. Sir?

Q. Does it not show, the "r" square, a high "r" square, show the percent of variation or the explanation for the percent of variation only among those variables which were considered? A. Yes, sir.

Q. And if qualifications were not considered then it does not show it with respect to qualifications [309] that having not been taken into consideration, is that correct? A. May I state where that might occur, that it –

THE COURT: We're not asking you for explanation so much at this time, Doctor, as we're asking you for answers to his question.

A. Is it possible, yes, it's possible, but I could give him the answer.

THE COURT: It is possible, and that's all he asked you.

A. Yes, sir. Thank you. I could tell him how it would be possible.

THE COURT: He doesn't want that.

Q. Maybe Mr. Blacksher would want to ask you that later on.

THE COURT: We'll get along faster if you'll confine yourself to the answers to the questions. If you can answer yes or no, do so.

A. Yes, sir.

THE COURT: If you have to explain it, you can.

Q. In whatever event, in whatever variables you're considering you characterize this as your statistical best guest? Is that you testified on direct? A. Yes, sir.

Q. That's without knowing how many people actually voted, you did not know how many people actually voted when you did this particular regression analysis? A. I wish to –

THE COURT: Your answer is you do not know how an individual voted?

A. I don't know how an individual voted.

THE COURT: All right, sir.

Q. What you're doing is not how people voted as to a particular candidate but merely the percentage of voters in the precinct as to the percentage of votes the particular candidate got? A. That's what I'm comparing but my conclusions are based on individuals voting. The conclusions I'm coming to do speak to individuals.

Q. Were you saying, were you testifying in terms of conclusions at your deposition or were you going to leave that to Dr. Cotrell? A. At my deposition I don't think I'd made many conclusions from them and I was given the idea that you were going to ask Dr. Cotrell for conclusions. The only conclusion I've made, as a matter of fact, is that there is polarization in voting.

Q. Now, you defined an "r" square, pardon me, a [311] moment ago you'd said I believe, that a high "r" square at the level of .9 would be so powerful as to race that it had to show racial polarization, did you not? A. Did I say that? Yes, sir.

Q. Okay, if a black candidate – A. Except I did say it was possible for it not to, in case an additive were brought in, and the particular instance you asked me, you told me you didn't want to hear.

Q. If a black condidate only exposed himself to black voters and only campaigned and the only issue he campaigned on was that he would represent black interests it would still be conceivable to get a high "r" square of .9, would it not? A. Yes, sir.

Q. Now, you'd indicated on your direct examination you used some hundred twelve or hundred fourteen precincts in all of your regression analyses. A. No, sir,

I used whatever precincts were available and in the 1976 county elections it was a hundred fourteen precincts.

Q. In the case of elections within the City of Pensacola you didn't have a hundred fourteen but in some instance only had twenty-nine or twenty-seven, is that correct? [312] A. It varied, yes, sir.

Q. Is twenty-nine or thirty-seven entries enough in your judgment, your professional judgment, to make a conclusion based upon that small number of entries? A. Yes, sir, it is, but, yes, sir.

Q. Wouldn't you need a hundred? A. Not necessarily, sir. If you'll check Draper and Smith, which is the definitive source on regression, you'll find they do regression with twenty for most of the examples.

Q. Do you recall that Mr. Caton at the deposition on February the 27th posed some hypothetical questions to you with respect, and gave you a number of samples and inquired about what conclusions you could draw from an instance of three samples? A. Yes, sir, I think.

Q. And you rejected the three samples, did you not, that you could draw conclusions? A. I think so. I don't remember.

Q. Then he asked you if you could assume there were ten and you rejected those as well, did you not? A. Yes, sir.

Q. In fact you asked for a hundred before you agreed to make a conclusion, did you not? [313] A. He gave me – if you could repeat the hypothetical example Mr. Caton gave.

Q. Okay, sir. I have the beginning of it but I can give you the page right here. It's on page 66. I'm trying to find where it begins.

MR. BLACKSHER: May I give the witness a copy of his deposition?

Q. I'm going to have to back up, I think, Dr. Curry, to say page 63, about line 12, and that's where the series of questions begins. Let me read it to you. Question, "Let's assume that candidate A was running against candidate B in all three of those races. Let's assume that candidate A was white and was also the incumbent. Let's assume that candidate B was black and was not an incumbent. Let's assume that candidate A won all three races. Let's also assume that candidate A received a majority of the white vote pursuant to your analysis and candidate B received the majority of the black vote. What sort of conclusion would you draw from that?" Answer, "Probably none to," and then Mr. Menefee states, "I'm going to object to the form. Answer it if you can." The witness: "I probably wouldn't draw any conclusions except the ones that you have already assumed, that the incumbents won every race. I don't understand, I couldn't do a statistical analysis of those [314] three races given the data that you have given me. That is an awful small sample." By Mr. Caton question, "You mentioned here you used several factors when you were doing your analysis: Income, voter registration, race, party preference, vote return, what was that?" Answer, "Vote return is what I'm predicting. You know, that is the dependent variable in this case. I'm checking turnout on each election, by the way, let's mention that." Question, "What I'm getting at is if you have," apparently a typo, "data that indicated two different things, how could I draw a conclusion. Can I draw a conclusion that white candidates vote for white people or that white candidates vote for incumbents or that black people do not vote for incumbents, how could I draw a conclusion?" Answer, "Okay, what I need to do, let me think a second about that you are getting at because the problem is a complex statistical problem. When they hired me, it took me a couple of days to think about the problem after

they gave me the details and then asked questions about it, so then, let me think about it a second. You have got three races in 1977 involving candidates, incumbents." Question, "Incumbent is A and newcomer is B. Also all of the incumbents are white and all of the newcomers are black." Answer, "Okay, and you are saying that the white people predominantly vote for [315] the incumbents and the black people predominantly voted for the newcomers on these three races?" Question, "Right." Answer, "Okay, I would say you are wasting your money on statistical consultant. That is just, I mean you have already said everything that can be concluded from that." Question, "Well." Answer, "I would say it's a dilemma, you know, why, the question to whether blacks just don't like to vote for incumbents or not is still open." Question, "Well, could I conclude from that, from the hypothetical that I have given you, could I conclude one of two different things, either that black voters like to vote for black people or that black voters do not like to vote for incumbents?" Answer, "Just given three races that feel every way, the blacks," question, "Yes." Answer, "Would you conclude or do you want to know –

THE COURT: Mr. Fleming, I think this is the longest version of impeachment I have ever heard in my life. I'm not sure what you're getting at.

MR. FLEMING: Has he testified differently than he's testified here?

MR. FLEMING: I think, Your Honor. I have about three more questions from this deposition.

THE COURT: All right, sir. I've never heard impeachment done in this way before. Go ahead.

[316] MR. FLEMING: I was only reading that much to bring it into context.

THE COURT: Go ahead and get through with it.

Q. Answer, "Would you conclude or do you want to know what I would conclude? I couldn't conclude anything from the three races, to tell you the truth." Question, "Let's assume there were ten of them with the same result in each one." Answer, "Could you give me a hundred elections?" Question, "Let's make it a hundred." So you asked for a hundred elections before you could draw a conclusion? A. Yes.

Q. With respect to that instance? A. In that particular situation. That's a different situation than what I'm doing here, though, considerably different, sir.

Q. It's a comparison of the number of samples, though, is it not, trying to draw a conclusion from the number of samples that you had to draw in each race? A. Yes, sir, and in this situation I don't, if it turned out the way Mr. Caton said I still wouldn't be able to draw the kind of conclusion he wanted from a hundred races, especially if they all went the same, because there's no variation in the example Mr. Caton gave me. In every case we know that blacks don't vote for [317] incumbents, blacks don't vote for winners, we also know that incumbents always win. Without the variation you don't have any statistics.

Q. Okay, sir. I appreciate that explanation. I would like now to go on to another matter, some of your fundamental explanation that you drew on the easel here for the Court. If I could back up just a little bit, what you say, do you not, is that a regression analysis gives you an equation of a straight line represented by the formula Y is equal to a plus bx? A. Yes, sir.

Q. And the little a in this instance is where the line intercepts the y axis? A. Yes, sir.

Q. And if you're applying it to the factual situation that we're applying here then that y axis would indicate an all-white vote where there were, pardon me, where there

are no blacks registered to vote in that precinct? A. That would be the best guess, sir. If you look at the example behind you, you'll see it crosses, that in the zero precinct the best guess from the equation is not where the zero race is.

Q. Okay, well, that's your this is your [318] hypothetical? A. yes, sir.

Q. On the next page you showed the line crosses between two dots. Is that your point? A. Yes, sir.

Q. Okay, and back to the equation Y equals a plus bx, then b is the slope? A. Yes, sir.

Q. Of the line, and this line is the line you attempt to draw each time you do a regression analysis. You could plot that line theoretically on every scattergram that you do in which you do a regression analysis, is that correct, sir? A. Yes, sir.

Q. I would like to look at some of these races, if we could. Why don't we look at a countywide race, 1976, first primary, between, in which Dr. Spence was the black candidate and his white opponents were Mrs. Marshall and Mr. Smith, 1976. A. Is that county commission, sir?

Q. No, this is school board.

THE COURT: This was a race between a white and a black?

MR. FLEMING: A black and two whites.

THE COURT: A black and two whites.

[319] MR. BLACKSHER: Number thirty-two in the summary, Your Honor.

THE COURT: Beg pardon?

MR. BLACKSHER: It's number thirty-two in plaintiffs exhibit 16, the summary, if you want to look at it, on page thirty-six of the summary.

Q. I wonder if we could look at the scattergram. Do you have that with you? A. Yes, sir, I'll find it for you.

THE COURT: You say page thirty-two?

MR. BLACKSHER: Page thirty-six, Your Honor, number thirty-two.

A. This is tabbed wrong.

Q. Well, I have a copy of it here, if we could work from mine, perhaps. Here you go, sir. A. Okay, that's fine.

THE COURT: I think I've got the results over here. You all go ahead. I'll look at it as you go.

Q. Let's examine that particular scattergram there. There are two in that particular race and if we could look at the scattergram that was done comparing the percent black to the percentage of votes for Dr. Spence. Would you draw for me, please, sir, the regression line.

A. Okay, let me see.

Q. In that particular instance.

[320] A. Let's see, we get the equation this is percent votes for Spence equals, this is the intercept, 25.23966, plus .7.

THE COURT: This is getting in the record. He's using your copy.

A. I'm sorry.

THE COURT: Go ahead.

Q. Is that all right on the scattergram? It's typed into the result, is it not, in your printout? A. Yes, sir, it comes out right here. This is the equation. You take the slope here, multiply it times percent votes for blacks and it gives me this equation and I would draw the line for the equation substituting in values. The easiest value to draw in, of

course, would be if the percent black were zero. That would be 25.23, which would be right about here.

Q. Will you draw the line, please, sir, or estimate it as bet you can. A. Oh, yes, sure.

THE COURT: Doctor, you don't have to be too accurate, just an estimate.

A. I can draw the line. If we had a hundred percent black neighborhood this would be 70 so we have 70 plus 25 is 95. It would be right here, and if I had a straight edge I would be able to draw you a straight line [321] and it goes right there.

Q. Okay, and an "r" square based on that line, you say, tells you what percent of variation in candidates' votes can be explained by the changes in percent black? A. Yes, sir.

Q. Okay, and you say your "Y" intercept there is 25 plus a fraction? A. 25.3966.

Q. On this scattergram does each of those dots represent a precinct? A. Yes, sir.

Q. And a plotting of the percent black in the precinct and the percentage of votes that that candidate got? A. Yes, sir.

Q. Can you look at that scattergram now in this particular race? A. Yes, sir.

Q. And note, if you would, does this not indicate that Dr. Spence got better than one-third of the votes in thirty-seven of the hundred fourteen precincts? A. I'd have to count.

Q. Why don't you count. A. All hundred or so?

THE COURT: What is it, gentlemen, you're driving [322] at?

I don't understand it. We're talking about race and those kind of things. He did get a substantial number of votes. But how does that prove that there's something wrong in his statiscal analysis when you get it down just to thirty-six precincts unless you're going to carry it a step further and show what the race percentage is? I don't understand this approach.

MR. FLEMING: Maybe I can get into it in a little bit more of a fundamental way.

THE COURT: All right, let's let him assume he got them in thirty-six. You counted them, whatever you want him to tell you, make the assumption, whatever it was; he got one-third of the votes in thirty-six precincts. Is that what you want him to do?

Q. Yes sir, this was a race with a .90 "r" square, and "r" square you consider very high, do you not, Dr. Curry? A. Yes, sir.

Q. Okay, if you count them does it not indicate that Dr. Spence got better than a third of the vote in thirty-seven of all the precincts? A. Yes, sir.

Q. Okay, does it also show that Dr. Spence carried over, he got over 50 percent of the votes in some nine precincts, which were over one-half white? [323] A. Let's see, I can get that. There's the 50 percent line. How much was the percent white, sir?

Q. Fifty percent white. A. Fifty percent white. Okay, he got over 50 percent?

Q. Right. A. In one, two, three, four, five, six, seven; seven, I count, sir, roughly. That's close enough.

THE COURT: Predominantly white precincts is what he's asking.

A. Yes, sir.

Q. Okay, and he got over 30 percent of the vote in several all-white precincts, did he not? A. In several, yes, sir, he did. All-white precincts, let's see, five of them, sir. He never got over 45 percent, though, in any all-white precinct.

Q. Okay, but nevertheless this was a .9 "r" square and shows a considerable white vote that Dr. Spence got, did it not? A. I wouldn't call it considerable, considering all the election returns, sir.

Q. Considering the fact he lost the election? A. Yes, sir.

Q. Is that what it takes, a considerable number, would it have to be that Dr. Spence won before he got a [324] considerable number? A. I'm sorry, I can't define considerable.

Q. I'm sorry, it just a rhetorical question and I withdraw it. A. Yes, sir.

Q. The point I'm trying to make, let me just ask you a question this way. Is it not possible to conclude in some instances, being some scattergrams and regression analyses, that you can have a relationship or a high "r" square and a relationship over the full range from zero percent black to 100 percent black yet within a certain range you might have no relationship? A. That's true, sir.

Q. Is that true? A. Yes, sir.

Q. I have a text here. Do you regard — A. Yes, sir.

Q. Mr. Hubert M. Blalock, Jr., who wrote the text *Social Statistics,* as authoritative in this field? A. Yes, sir, it's one of the best texts. I used that in 1971 in my first regression course. Chapters sixteen and seventeen are the chapters on regression. I think.

Q. Real good, because I'm referring to a diagram in paragraph seventeen, a copy of which I have [325] marked as defendant county exhibit number 1 for identification, and I would ask you if that diagram explains this phenomenon. Here's a copy for the bench. Or if that's an example of this phenomenon showing a relationship over the full range. A. Yes, sir.

Q. And not showing it within a limited range? A. Yes, sir.

MR. FLEMING: I'd offer the Xerox copy of this diagram into evidence as defendant county's exhibit number 1.

THE COURT: Any objection?

MR. BLACKSHER: No objection.

THE COURT: Put it in evidence without objection.

DEPUTY CLERK: Defendant county's exhibit number 1 is received in evidence.

Q. So you can have a relationship over the full range? A. Yes, sir.

Q. And not necessarily have one at the low end, and bringing that to this case, then you could have a relationship of percent black to percent of votes that a particular candidate gets, very positive relationship over the entire range? A. Over all the precincts.

[326] Q. Whereas you might not – A. Yes, sir.

Q. Where you have a low percentage of white candidates? A. Can I show you an example of that, sir?

Q. Let me go through some other examples now, Your Honor. This is the point I was trying to make, and if I may and you'll bear with me a few minutes, I would like to go through a few more of these contests. Let's look at –

THE COURT: If you're going to another one, you want to finish with him. He asked you questions about this, but does that alter your opinion?

A. No, sir, it doesn't alter my opinion.

THE COURT: So there you are when you're cross examining.

MR. FLEMING: Thank you, Your Honor. This is plaintiffs' expert.

THE COURT: I don't see any basis, frankly, to cause me to be dissatisfied with it. We can take all kinds of figures and things like that and come up. All this is possible, but he had this particular situation and based it on it. Now, I'm no expert in statistics and I assume you're not, sir, either.

MR. FLEMING: Well, that's why, Your Honor, I'm [327] trying to bring it down to the black and white of the scattergram.

THE COURT: Fine, sir, but as I get through with what you just got through and we took ten or fifteen minutes on it, it hasn't altered his opinion one bit, nor did I see any basis for it to be required to be altered.

MR. FLEMING: I don't think it's going to be altered.

THE COURT: I see no reason why it should be from what you're cross examining on, and I'm the one you're trying to get to.

MR. FLEMING: I'm not trying to alter his opinion. I'm merely trying to show the scattergrams support the defendants' opinion in the case as well as support the conclusions drawn by Dr. Curry.

THE COURT: I'll let you try again and see some place, but there are variations in it, but what he has here are all

consistent with what he said, as I understand it. I'll let you go further. Go ahead.

Q. Thank you, Your Honor. I would like you now, Dr. Curry, to refer, please, to the 1974 general election for the school board between Mr. Jenkins, the black candidate, and Mr. Leeper, his white opponent.

THE COURT: This is 1974?

[325] MR. FLEMING: I have them marked on the tabs.

A. Thank you.

MR. BLACKSHER: Page thirty-six, Your Honor.

THE COURT: Page thirty-what?

MR. BLACKSHER: Thirty-six in the summary.

Q. That one is for Leeper. Let's look at, there doesn't appear to be one for Mr. Jenkins in this, does there? A. No, sir, it would have been a waste of computer money to keep running mirror images.

Q. Examining that particular scattergram, keeping in mind all the dots indicate the runs in a particular precinct – A. Yes, sir.

Q. Does not that scattergram support the conclusion that Jenkins carried some nineteen precincts which were over half-white? A. Jenkins, let's see, this –

Q. That's on Leeper. A. This is Leeper, okay.

THE COURT: Jenkins was running against Leeper? Is that the race you're talking about?

MR. FLEMING: Yes, sir, the 1974 general election.

A. Let's see, these are all-white precincts up here and carrying would be getting over 50 percent of the [329] vote.

Q. Yes, sir. A. Since Leeper got over 50 percent vote

in all these white precincts I guess these would be the ones where Mr. Jenkins got over 50 percent. I count two, sir.

Q. Okay, I didn't say all-white. I said where they were over 50 percent white. A. Fifty percent, sorry, sir.

THE COURT: Your point is what now, that Jenkins did what now, sir?

MR. FLEMING: My point is that despite a high "r" square of .89 in this case that Mr. Jenkins is getting a considerable number of white votes.

A. I would rather say some myself.

THE COURT: How's that?

A. I would say some rather than considerable.

Q. Rather than making the distinction between some and considerable, that's why I'm suggesting we count them.

THE COURT: What were you saying? He got so many votes in something?

MR. FLEMING: I'm saying this diagram suggests that he carried nineteen precincts which were over half-white.

[330] THE COURT: I tell you what I want to do. It's about 10:30. I can see where we can go on and he's got to take time to do all this counting. I'm going to take a recess and you can sit down and tell him whatever else is coming up and let him count it while we take a recess and move along. I'm getting more and more concerned, the way this case is going. It takes a lot of time.

MR. FLEMING: Well, it could take a while, Your Honor, so maybe we ought to take that recess.

THE COURT: We'll try to move it along and work late hours. Suppose we take a recess at this time and be in

recess for about fifteen minutes to give you a chance, whatever else the rest of your cross examination is getting into, you go into it instead of taking time now to count and do things like that. Court will be in recess for about fifteen minutes.

(Recess)

(Open court)

THE COURT: You may proceed, Mr. Fleming.

MR. FLEMING: Your Honor, I think I can be very brief from this point on. Counsel for the plaintiffs have agreed that it would be acceptable if I prepared a summary at a later time of the conclusions I would like to be drawn from these scattergrams, and so long –

THE COURT: You don't want to cross examine him [331] on them?

MR. FLEMING: Yes, Your Honor. I was just pointing out I'll make the cross examination much briefer due to that.

THE COURT: All right, sir.

CROSS EXAMINATION RESUMED

BY MR. FLEMING:

Q. Dr. Curry, would you tell the Court what you mean when you conclude, as you have done in many instances here this morning, that there's polarization. A. For the definition I'm using here, if there's an "r" square higher than .50 and a relationship between percent black voters in the precinct and percent of the votes a particular candidate gets, that vote is polarized.

Q. So that's all you mean to say then, is a high "r" square? A. Yes, sir.

Q. Can members of the black race, if members of the black race are voting for only black candidates and there is no, little evidence with respect to how the whites are doing, can you still have a high "r" square? A. There is evidence of how the whites are doing here, sir. No, sir, I don't understand. I don't understand the question, sir.

Q. Can you have a high "r" square by virtue alone [332] of blacks voting consistently for blacks? A. No, sir, you have to have whites not voting for blacks also, or a tendency.

Q. Let's look at an example then here, if we could. I referred during the recess to a 1975 election for city council in which Mr. Williams was the black candidate. His white opponents were Messrs. Ferraro and Porter. We had an "r" square of .67, which you indicated would be indicative of polarization in that race, did you not? A. Yes, sir.

Q. Would you explain in that scattergram and tell me if it is true that with respect to the all-white precincts, and I would be defining all-white for the purposes of this question, a precinct which is 95 percent or better white — A. Okay, that's right over here, sir.

Q. That in every one of those elections but two or every one of the precincts but two Mr. Williams carried and got a majority of votes. A. Yes, sir. You don't need a statistician to tell you that.

THE COURT: You think there is polarization?

A. There is because it's defined by blacks voting differently from whites. Even though this man won [333] this election still blacks and whites were voting in a polarized manner here.

THE COURT: What you say is this, that when we get through with race polarization it is not necessarily in-

dicative of the question whether a black candidate can or can not get elected; all polarization does is show to varying degrees of significance a tendency on the races to vote for members of their own race? That's all polarization shows?

A. Yes, sir.

THE COURT: It is not indicative and can not be said to be absolute proof certain that even where we have polarization a black can not get elected against a white because we've had it happen?

A. Yes, sir.

MR. FLEMING: Yes, Your Honor, and further that you can have polarization by Dr. Curry's definition even in a case where the black candidate gets the vote in every white precinct except two.

THE COURT: Let's ask him about that one again. In this particular instance Williams, from what you just told me, Hollice Williams, he carried the predominantly white precincts.

A. He carried all but two in this particular election, sir.

[334] THE COURT: How can you say there was polarized white voting against him?

A. Compared to the black, compared to the black votes there were more. There were more. He got more votes in the black precincts. That's the only way you can say.

THE COURT: But all you can say there is that the blacks voted for him but you must also say that the whites voted for him.

A. Yes, sir.

THE COURT: So your definition of polarization means where any one race votes for that particular race, that's the limit of your definition?

A. It's not just a matter of race. It could be, for instance, we had two white candidates even, or two black candidates, and one race voted for one of the candidates solidly and one race voted for the other candidate solidly. It's a matter of whites and blacks voting at different poles, different ends of the spectrum. In this case what this means –

THE COURT: Anyhow when you said there was racial polarization in every race you checked, under your definition of racial polarization it would mean in the particular case whereas here in your statistics your approach shows the blacks voted for the black candidate.

[335] A. Yes, sir.

THE COURT: That would be sufficient to establish racial polarization as far as you're concerned because in this instance it also shows that the white people voted for the black candidate as well.

They voted less. They voted less for the black candidate and voted more for the white candidate.

THE COURT: I see. It gets to where your "r" two factor was what?

MR. FLEMING: Point 67.

Yes, sir.

THE COURT: Point 67.

MR. FLEMING: I have no further questions, Your Honor.

THE COURT: All right, sir. Redirect? Didn't we have another election in which we had a black man elected? I was going to ask about that one.What about that one?

MR. FLEMING: That would be Dr. Spence.

THE COURT: I would like to have you tell us about that one. I know we had one more.

A. Okay, do you have that handy?

MR. FLEMING: That was for city council.

A. Yes, sir.

MR. FLEMING: Here we go. I've got it right [336] here.

THE COURT: Which race was that one, sir? I've forgotten which one it is. You all know, I'm sure.

MR. FLEMING: Nineteen seventy-five.

MR. BLACKSHER: Page twenty-three of the summary, Your Honor.

THE COURT: Page twenty-three, all right.

MR. FLEMING: Your Honor, I submit that an examination of this particular race, here's the scattergram for Dr. Spence. There was an "r" square of .82. Dr. Spence won twenty-five of the thirty-seven precincts and only nine of those twenty-five were over 50 percent black and I think that would be borne out by examination of the scattergram.

THE COURT: Well, that shows an "r" two factor you have of black, this is Spence-Gilmore race, is that right?

MR. FLEMING: I believe so, Your Honor.

THE COURT: For the city council.

MR. CATON: Right.

THE COURT: In that one you showed an "r" two factor of 82, which would indicate polarization to you?

A. Yes, sir, there was polarization.

THE COURT: Yet when we got around to the white

people voting in this thing you said since they did not vote for [337] him but the white people did vote for him, did they not?

A. Sir, less white people voted for him than black people. That's what I'm saying, polarization.

THE COURT: But more white people voted for him than voted for the white opponent, is that correct?

Yes, sir.

THE COURT: So you can't say from that there was polarization from the white people either because actually more of the white people voted for the black candidate than voted for the white candidate.

A. The black candidate, yes, sir.

THE COURT: I can say there's polarization because blacks are significantly voting different from whites?

MR. FLEMING: And you're saying there can even be racial polarization by your definition when the black candidate wins the election in a county where there are only 16.2 percent registered voters who are black?

A. Yes, sir.

MR. FLEMING: That's all I have, Your Honor.

THE COURT: Your polarization is a one-way street. You say there's polarization in either race when it's shown to be voting by race?

A. It takes both of them. It takes one voting considerably less than the other.

[338] THE COURT: Go right back to the last race. When you take one vote considerably less than the other you're saying more blacks voted for the black than the white one, but by the same token you're saying more whites voted for him than the white one.

A. Yes, sir, that is the outcome, which I'm not analyzing outcomes.

THE COURT: One other thing. We had a school board race which you pointed out in which, let's see, Dr. Spence lost out in the school board race a little bit later on, didn't he? I believe that's before me. Was it 1976?

MR. BLACKSHER: Yes, sir, on page thirty-six.

THE COURT: We had a-school board election there in which every candidate was defeated for reelection. Now, in your figures you don't take in, you didn't put in a factor of incumbency.

A. No, sir.

THE COURT: You ignored that and that can account for a percentage of the votes sometimes too, can't it?

A. Yes, sir, it could, except that I couldn't, it would be impossible.

THE COURT: Okay, so in this particular case here were incumbents who normally have an edge in getting elected, isn't that true?

[339] A. That's what I've been told and I've read in the literature that's true.

THE COURT: That's outside your expertise?

A. Yes, sir, I'm afraid it is.

THE COURT: All right, let's let it go then. In this particular race there were three candidates up for reelection. Two were white, one was black. All three went out.

A. Yes, sir. I didn't analyze that.

THE COURT: As far as you're concerned does that have any effect on your statistical analysis here in that particular race?

A. No, sir, it has nothing to do with it.

THE COURT: You didn't look for other reasons why all three were defeated?

A. To use incumbency I would have to be trying to predict whether a person won or lost. I wasn't predicting whether a person won or lost but the percentage of votes he got in a precinct.

THE COURT: It still remains on overall analysis all you can do is come up with polarization and that does not necessarily mean that blacks can't get elected or that whites always get elected. As far as you're concerned it can't mean that because all you can do is come up with the polarization to show trends to vote race by race.

[340] A. Yes, sir. In fact if you have a single-member districts you could still have polarization easily.

THE COURT: Of course you could still have it.

A. Yes, sir.

THE COURT: Even in a single-member district you might have a black and white running from the district, is what you're saying.

A. Yes, sir.

THE COURT: In fact I guess that's what they're trying to get to, the polarization there. I don't know, when I get through thinking about that one. A single-member district, that's what this thing is all about, get it to a single-member district so that race vote doesn't count. That's about what it amounts to, counsel. That's what we're talking about.

MR. BLACKSHER: I confess I'm not following you, Judge. Maybe I can agree if I understand.

THE COURT: You're trying to go to single-member districts and have them elected, running from that district. No, that's not quite true either. You're trying to get it to where, yes, that is true that you get a district that you have more blacks than whites so if you don't vote for race we get a black one elected. We're looking for polarized voting.

MR. BLACKSHER: Where the preference of the blacks [341] might be registered in the outcome.

THE COURT: It really gets to polarized voting.

MR. BLACKSHER: Yes, sir.

THE COURT: In a district, and overall we encourage people to forget the fact of race in voting. You say we've got a situation where they aren't forgetting so now we go to a single-member district where it really gives some effect.

MR. BLACKSHER: I think that is a fair simplification.

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[Caption Omitted in Printing]

TESTIMONY OF CHARLIE L. TAITE

[348] CHARLIE L. TAITE, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Taite, have you been sworn? A. Yes, sir.

Q. You've been sworn. Would you give us your full name and address, please? A. Charlie L. Taite, 802 East Brainerd Street, Pensacola, Florida.

Q. What's your age, Mr. Taite? [349] Sixty-four.

Q. And for the record, you are black? A. Right.

Q. Your present employment, sir? A. I am semiretired.

Q. And could you tell us what your prior occupation was? A. A custodial training officer of the Escambia County School Board, Pensacola.

Q. Have you also been in private business? A. Yes, sir.

Q. What kind of businesses have you operated? A. I've operated a grocery store, drycleaning plant and a night club.

Q. Mr. Taite, were you born in Pensacola? A. No, sir, I was not born in Pensacola. I was born in Alabama.

Q. When did you come to Pensacola? A. I come to Pensacola in 1919.

Q. Did you attend school in Pensacola? A. Yes, sir.

Q. Have you also worked for the federal government, Mr. Taite? A. Yes, sir.

Q. When was that and what was your job? [350] A. I worked for the federal government first in 1941 as a chauffeur but it turned out after my examination and I was taken on the job that I was given a fork and sent to the coal pile.

Q. Where was this, Mr. Taite? A. At the Naval Air Station, Pensacola, with a white chauffeur driving the truck, and I was supposed to load it for him.

Q. Did you work at the Naval Air Station for thirteen years? A. I did. I went in the service after the first episode. When I came out of the service in 1943, I went back to the Naval Air Station and applied for a mechanic's helper's job.

THE COURT: I'm having a little difficulty seeing all the relevance of the prior history of his background and things he might have done at the Naval Air Station and that kind of thing.

Q. Let me get to it more directly, please. Mr. Taite, did you offer for election to the city council of Pensacola in 1955? A. Say that again now.

Q. Did you offer as a candidate for the city council of the City of Pensacola in 1955? A. Yes, I did.

* * * * * * *

[354] Q. Mr. Taite, what made you think that as a black person you would have a chance of actually winning the election to the city council in 1955? There had not been a previous person, a black person, elected previously, had there?

MR. CATON: Your Honor, if I may, and I don't like to make too many objections on leading questions, but he's

assuming various things in his question and he's assuming, number one, that he didn't feel that he could win an election. That's the way the question was phrased.

THE COURT: I don't think he's in a very critical area yet. The objection, I'll let him lead a little bit. It might help us. The objection is overruled.

MR. BLACKSHER: Yes, sir. It happens to be one of the things we've stipulated.

THE COURT: That's exactly right as well. That's exactly right as well.

Q. So why did you think you had a chance to win? A. Because within Ward Two where I lived the ratio of black and white in my opinion was close enough equal until I thought I had a chance to win.

Q. And that was a single-member district? [355] A. Single-member district, right.

Q. Had any black persons to your knowledge prior to this time attempted to run as a candidate for city council? A. Yes.

Q. Who were they and when? A. N.W. Williams and Dr. Polkinghorne. I believe the year was '53. They qualified. And the paper brought out their qualifications, their pictures, and they stayed in the race for a short time and then they came out of the race, for what reason.

Q. So they were out of the race before the election actually was held? A. Yes, yes.

Q. Had you been active at this point of your candidacy in any attempts to increase black voter registration? A. Yes, I had.

Q. Would you tell us what they were. A. They

were from organizational point of view, conducting registration drives, going from house to house, trying to influence people to register to vote in order to be able to help correct some of the injustices.

Q. Were there some organizations that you had formed or you were a part of who were active in the voter [356] registration drives? A. Yes, the Pensacola Improvement Association, the NAACP, were the two principal organizations here at that time.

Q. Okay, sir, did either of those organizations have anything to do with the 1945 law suit that changed the all-white primary? A. The Pensacola Improvement Association did.

Q. Mr. Taite, when did you first register to vote? A. Nineteen forty-eight.

Q. Why had you not registered to vote before 1948? A. Because I wasn't allowed to.

Q. Did you actually attempt to register? A. Yes, I did.

Q. When was that? A. In 1941.

Q. Would you tell us what happened. A. They just told me that no blacks was allowed to register for the Democratic Primary.

Q. This was at the County Court House? A. The County Court House, yes.

Q. Was the city at that time having a separate registration for its elections? [357] A. I believe they were.

Q. Did you ever attempt to go to City Hall to register to vote? A. Yes, I did.

Q. When was that? A. During the same year.

Q. What happened? A. They said that they didn't allow black people to vote in the Democratic Primary. Therefore I couldn't register.

Q. Mr. Taite, do you know of any black persons who did vote during the pre-1945 days in city elections in Pensacola? A. I don't know of any person that voted in the city election in Pensacola at that time. I do know that several people were contacted to vote and I happened to be one of them and we were asked if our names could be used.

Q. Wait a minute, you'll have to explain yourself. When were you contacted and who contacted you? A. In 1940, I'm not sure of the year, but I believe it was 1944 or '45, one of the two, and the two candidates were running and the power structure was interested in a particular candidate being the winner and several of us was contacted by a Mr. Tyler, who is not [358] living now, relative to using our names as voters to help this particular candidate win.

Q. Were you actually asked to come down and cast that vote? A. No, I was not.

MR. CATON: Your Honor, I'm going to have to object to that, what he was asked to do by someone that's not here. That would be hearsay testimony.

Q. Who was this person, Mr. Taite, that asked you to come –

THE COURT: Is he living or dead?

Q. Who contacted you?

A. Mr. Tyler.

THE COURT: Is he living or dead?

A. He's dead now, I believe.

THE COURT: I think I'm going to let that in under the exception. Objection overruled.

Q. I'm sorry, I didn't get your answer to the question. Did he actually ask you to come down to the City Hall and cast the vote? A. No, he didn't. He asked if my name could be used.

Q. What did you say? A. I told him no, it couldn't be used unless I could go down and cast the vote. Then I would permit him [359] to use my name

Q. Mr. Taite, would you tell us how you conducted your campaign for city council in 1955. What were some of the tactics that you employed to make yourself known to the voters? A. The first thing I done was I went to the Interdenominational Ministers Alliance and announced my candidacy. Also to the Baptist Ministerial Alliance and the Methodist Ministerial Alliance. I had no organization. I got the approval of the ministers. I also had the approval that I could make some speeches in some of the churches. There was a gentleman here, the late C.C. Harvey, who delayed his vacation in Pensacola to help me in my campaign. I used the tactics of going from house to house, knocking on doors and talking to people, and I went to every house within Ward Two.

Q. Well, how did you know what the boundaries of Ward Two were? A. Well, we got the boundaries from the registration office and if my memory serves me right the boundaries for Ward Two was then, on the west was somewhere about Spring Street.

THE COURT: Well, he just asked you how you got them. We don't have to get into that.

[360] Q. Did you knock on the doors of white people? A. Yes, I did.

Q. Okay, sir, and did any of the, did you ask the white people to vote for you? A. The few that would listen to me. Most of them turned me away, but the few that would listen to me, I did ask them to vote for me.

Q. Mr. Taite, during that campaign in 1955 were you contacted again by Mr. Tyler, whom you mentioned earlier? A. Yes, I was.

Q. Would you tell us what happened. A. Mr. Tyler came to the grocery store where I was operating the store and asked me if I was willing to come out of the race because I couldn't win and I told him no.

MR. CATON: Your Honor, I object again. Excuse me, Mr. Taite.

THE COURT: This is going pretty far, sir.

MR BLACKSHER: Your Honor, this, we think, is important testimony. We ask that it be admitted under the dead man exception.

THE COURT: Under what evidentiary rule? I went a little bit further with you under the exception in the rules because the man was dead but now you're getting [366] intimidation and so forth up to date, and we were trying to show that this sort of thing did happen in recent times.

THE COURT: Yes, of course, and when you say recent times, it's some twenty-three years ago, so I don't think it's so very recent. And the rest of it is that to me, anyhow, let's go ahead with it.

MR BLACKSHER: Yes, sir.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Did Mr. Tyler identify himself to you as an agent of any other public official? A. Yes, he did.

Q. Who was that, sir? A. Congressman Bob Sikes

Q. You say you had one volunteer helper in this campaign, Mr. Taite? A. One volunteer helper, yes, sir.

Q. Could you tell us – A. C.C. Harvey.

Q. Could you tell us how many friends or helpers you had observing the polls on election day? A. At precinct 29 the late Robert Walker. At precinct 27, Deacon Greer, Gibbons Greer. And at precinct 28, George Powell, I believe, was his name. At [367] 30, Attorney Wilson, who was guiding the legal end of my campaign, was supposed to have been someone there, to my knowledge, but there was no anyone at precinct 29

Q. So you're saying you had somebody watching three of the four precincts anyway? A. Yes, sir.

Q. Okay, could you tell us if you attempted to observe the counting of the votes at the precincts you were watching? A. Yes. When the polls closed, I tried to find out from the clerk the number of votes in precinct 29.

Q. I'm sorry, I didn't understand. You tried to find out what? A. From the clerk the number of votes casts at precinct 29. She refused to tell me. Mr. Walker and I followed the clerk to the City Hall to see the votes counted and when we got to the City Hall they allowed the officials with the box to go in the City Hall.

MR. CATON: Your Honor – excuse me, Mr. Taite. I'm going to interpose objection as to this type of testimony. Evidently what he's testifying about concerns

perhaps the conduct of the election or how the votes were casts, and he would have a legal remedy at that time and I don't know the materiality or relevancy.

[368] THE COURT: You may take him on cross examination on that point. Objection overruled. Go ahead.

Q. You may continue. A. And when we got to the City Hall, we were told that Mayor Mason had won the election by sixty votes and he had gone home. I asked the question if we would be allowed in the City Hall to observe the count and we were refused, so we didn't get a chance to see any of the count. We had to take their word for it.

Q. Now, you say that someone told you that Mayor Mason had already won before the box from 29 was counted? A. The election officials at the City Hall, yes.

Q. Mr. Taite, did you hear any radio broadcasts that day concerning this campaign? A. Yes, I did. On several occasions WCOA broadcasts between 3:00 and 4:00 o'clock that unless the white people get, at home, get on the telephone and begin to call their friends –

MR. CATON: Your Honor, we're getting into hearsay again. A. You would have a black councilman next day.

[369] THE COURT: He's not within the hearsay exception. This is not offered for the truth of what it is. It is offered for the fact the statement was just made. Objection overruled.

Q. You were interrupted. Would you please continue with what was said on WCOA. A. The announcement was being made over WCOA between 3:00 and 4:00 o'clock for the white people to get on the telephone and call other white people within the Ward and ask them to be sure and get to the polls and vote before 7:00 o'clock, "Or

we will wake up the next morning with a black city councilman." Because at that time I was leading Mayor Mason by a substantial number of votes.

Q. Well, let me ask you, Mr. Taite, you said you went from door to door, even to the white community, to the houses of white people in the Ward. Weren't you concerned that your presence might turn out a heavy white vote against you? A. The method I used, I thought, would be a low key. I didn't go to these houses dressed as a potential threat to a candidate from an intelligent point of view. I went to these houses with common clothes on. I was clean but they were common clothes and in talking to these people I felt like that they would just discard [370] me, disregard me as being a kind of a busybody rather than a serious candidate, and that way I might not have the hate group against me because of the fact that they'd figure, "Well, he doesn't look intelligent, he's not going to be a threat to anybody, so we'll just overlook him."

Q. Okay, Mr. Taite, after the election in 1955 were there any changes made in the boundaries of Ward Two? A. Yes.

Q. Would you tell us what they were and how they affected you. A. The boundaries within Ward Two was moved further out to take in more white voters.

Q. Which direction was it moved? A. It was moved east from the present Eighth Avenue intersection over to —

MR. CATON: Your Honor, excuse me, I just noticed he made a statement I wish to object to and make a motion to strike. He stated the boundaries were moved east, I believe, and then he concluded that by saying, "To include

more white votes." That's a conclusion of the witness that he's not qualified to make and I move to strike that.

THE COURT: You're probably right, sir, but you [371] could take him on cross examination. The rest of it —

MR. CATON: I would like to move to strike that statement from the record.

THE COURT: I'm going to let you cross examine him to find out whether he knew in fact about it.

MR. CATON: Could I get a ruling on the motion?

THE COURT: The motion presently is denied.

MR. CATON: Yes, sir.

THE COURT: You may renew it at a later time, sir. Aren't you getting into beyond that area? We don't need testimony from him. We have testimony that from 1957 or '56 that some boundaries were moved out, but are you getting into something already stipulated or agreed?

MR. BLACKSHER: I don't think it's stipulated. There's prior evidence, and if Your Honor please, the only reason —

THE COURT: Go ahead. I thought you were getting into something again. There may be some argument about why it was moved but I thought the fact it was moved and it took in people was stipulated. I may be wrong. Go ahead, sir. I guess we'll save time with you going ahead.

MR. BLACKSHER: I thought it would be helpful to have in the record indication of what these [372] changes that we talked about on paper meant to a politician on the ground.

THE COURT: I had assumed it was stipulated. If it wasn't, go ahead.

MR. BLACKSHER: But, Your Honor, I'll not pursue the point. I think that's all for the plaintiffs.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. CATON:

Q. Mr. Taite, I believe you have run in just the one city council election, is that correct, in 1955? A. That's correct.

Q. And you never did run for any other political office in the city. Did you ever run for any office anywhere else in Escambia County, school board, anything? A. No, I have not.

Q. You are aware that Dr. Spence ran for office at one time and was unsuccessful and later ran again and was successful? A. Yes, I am.

Q. Was this the first time you had ever run for office, any elective office? A. You mean –

Q. The '55 election? [373] A. That's the first time, yes.

Q. Did you have any prior experience with any type of political campaigns? A. Yes, I did.

Q. What type of experience did you have? A. I had experience in working in campaigns with various candidates over the years.

Q. Which various candidates? A. County commissioners, the sheriff's department, the legislature.

Q. And these were white candidates or black candidates? A. They were white candidates.

Q. So you got along okay with some of the white peo-

ple in the community also? A. We didn't get along with them in a sense. It was a forced situation where you couldn't run and you had to work with somebody in order to be able to –

Q. You were forced to work in the campaigns? Is that what you're telling us? A. Do what?

Q. You were forced to work in their campaigns? Is that what you're telling us? A. Mentally, yes.

Q. Mentally? [374] A. Yes.

Q. Could you explain that a little more to me, how they go about mentally forcing you to work in their political campaign. A. Well, that's easy to explain. When you don't work in campaigns, then you don't get a chance to know the people who is going to control the government. So in order to know the people that's going to control the government you have to be active in the campaign.

THE COURT: That's all you meant by that statement? A. That's all, yes.

Q. But you voluntarily worked for these other candidates?

THE COURT: Nobody forced you to do it? You were doing it yourself because you wanted to know the candidates better? A. I wanted to know the candidates in order that I could survive. My job depended on them.

Q. Incidentally, your job, did you say you worked at the Naval Air Station? Is that the job you're talking about? A. Not necessarily. I worked for the Naval Air Station. I worked for the school board for twenty years and I worked at some private jobs and I run businesses [375] here. So I've had a variety.

Q. Yes, sir, you've had several, but immediately prior to the 1955 election – A. No, I didn't work at the Naval Air Station.

Q. Okay, when did you work at the Naval Air Station? A. I worked at the Naval Air Station about a year before. I left the Naval Air Station about a year before I run.

Q. And were you under the Civil Service System at the Naval Air Station? A. Yes, I was.

Q. And how did your employment terminate? A. It terminated on the premise of intimidation, bringing in certain accusations against a man that had no witnesses to prove that it was right or wrong, simply because I asked for my rights as a citizen at the Naval Air Station to be able to work at a job that the white was working, meaningful jobs that paid good salaries, and was refused, and I lost my job as a result of that. But they camouflaged it and said it was insubordination.

Q. They camouflaged it and charged you with insubordination? A. Right, and I've never been able to straighten that out.

[376] Q. So you were discharged for insubordination? Is that what you're telling us? A. No, I'm not; I'm telling you that's what they said.

Q. I see. Did you have any type of hearing at the time? A. Yes, I did.

Q. And what type of hearing did you have? A. I had a hearing before an all-white board of committees at the Naval Air Station, a white prosecutor and white jurors and no blacks.

Q. I believe you said there was no witnesses against you. A. No witnesses against me?

Q. Yes. A. I don't remember saying there was no witnesses against me.

Q. Well, did anybody testify against you at that hearing as to your insubordination?

A. All of the whites testified against me, yes, so certainly.

Q. And you were allowed an opportunity to present your case? A. I was not allowed an opportunity to present my case. They refused me the opportunity of having legal [377] counsel. They refused me the opportunity of representing myself. They said I could get some employee off the Naval Air Station to represent me but I could not have a lawyer.

Q. They told you you were denied the right to have a lawyer? A. They denied me.

Q. Either that, or did they refuse to pay for it? A. They denied me.

Q. Did you ask them if you could hire your own attorney? A. Yes, I did. I even named the attorney, and they went far enough to tell me that John M. Coe was a Communist and he's not allowed on the station. That was the man I was going to hire.

Q. Did they say you couldn't hire another attorney besides Mr. John M. Coe? A. Yes, they did. They told me I couldn't have another attorney to come on the station.

Q. Who is "they"? A. Beg pardon?

Q. Who is "they" that's telling you all these things? A. Mr. Foster.

[378] Q. What position does he hold with the Naval Air Station, or did he hold? A. He was the top man at

the Naval Air Station in the civilian capacity. Mr. Vinyard, who was his assistant; Mr. Vinson, who was assistant to him; Mr. Villar, who was the immediate supervisor.

Q. And you're telling us that all these top officials at the Naval Air Station under the Civil Service System told you you could not have an attorney to represent you? A. Yes, they did.

Q. And you subsequently decided to run for the City Council of the City of Pensacola, is that it, after you were terminated? A. Yes.

Q. Could you briefly go over again your campaign in that particular election? I believe you said you had one volunteer helper. A. One volunteer helper.

Q. Is there any particular, did you ask other people to help you in the campaign or just nobody else volunteered? A. I asked a few people to help and the most of the people that I asked to help was afraid they might lose their job if they helped me campaign.

* * * * * *

[399] REDIRECT EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Taite, have at-large elections in the city elections as well as in the school board and county commission had any effect on your not offering as a candidate again since 1955? A. Yes.

Q. Why is that, Mr. Taite? A. Because of the expense –

THE COURT: You're plowing new ground, aren't you, Counselor. You're opening up a new area.

MR. BLACKSHER: No, sir. There was testimony, there was cross examination of Mr. Taite Concerning his willingness to offer in the election that he did run in and he was not afraid to offer, and why he did, and I was just trying to close that up, why he was willing to offer.

THE COURT: I'll let you go ahead but if you get them on their feet again, then you do. Proceed, sir.

Q. Excuse me. You may answer it, Mr. Taite. A. Because of the expense incurred in an at-large election and the chances of winning, would discourage anybody.

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TESTIMONY OF OTHA LEVERETTE

[401] OTHA LEVERETTE, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q. Reverend Leverette, were you sworn the first day of trial? A. Yes, I was.

Q. Would you please state your name and address for the record. A. I'm Reverend Otha Leverette, 1541 East Leonard Street, Pensacola.

Q. Thank you, sir. And at what church are you pastor, please sir? A. Saint John Devine Baptist Church.

Q. How long have you been there? [402] Fourteen years.

Q. When did you first come to Pensacola? A. The second time, 1964.

Q. Okay, sir, and when was the first time then? A. Nineteen forty-one.

Q. How long were you in Pensacola at that time? A. I was here from '41 until '48.

Q. Okay, sir. Reverend Leverette, have you offered yourself as a candidate for public office? A. Yes, I have.

Q. And when was that and what position? A. Nineteen seventy for the school board, district four.

Q. Place Four? A. District Four.

Q. District Four. Were you a candidate in the Democratic Primary? A. No.

Q. Would you please explain. A. Well, I didn't have any opposition in the first election, in the primary. I didn't have opposition till I got to the general election.

THE COURT: Well, you did run in the primary without opposition? Is that what you're saying?

[403] A. I didn't have any opposition.

THE COURT: I know, but you were entered in the primary? Yo had no opposition?

A. Right.

THE COURT: You ran in the primary as a Democrat or Republican?

A. Democrat.

THE COURT: I see. And you had no opposition in the Democratic primary?

A. Right.

THE COURT: And then you had opposition in the general election?

A. Yes, sir.

THE COURT: All right, sir.

Q. And who was your opponent in the general election? A. Mr. Leeper.

Q. I see, sir. And what was the result of that race? A. Well –

Q. Who won? A. He won.

Q. Okay, sir. He was the Republican nominee? A. Right.

Q. Okay, sir. Have you ever run for public office [404] other than this one time? A. No, that was the first time.

Q. Okay, sir. Have you ever run for public [404] office other than this one time? A. No, that was the first time. on the school board and I felt like there should be a black on the school board.

Q. Okay, sir. Why did you decide to run for the school board as opposed to county commission or perhaps city council? A. Well, at the time I just decided to run for the school board because I had, well, I had a wife teaching in the school system, had sons and daughters teaching in the school system, a lot of members teaching in the school system, and I just thought that I would run.

Q. Okay, sir. How did you assess your chance of winning when you offered yourself as a candidate? A. Well, I didn't have, I didn't feel like I had much of a chance and what I did, I ran a low key campaign, and to tell you the truth, they really didn't know who I was.

Q. Who is "they"? A. I mean the whites. They thought I was white.

MR. RAY: Objection, Your Honor, to hearsay.

THE COURT: Objection is sustained to that one and that last answer is stricken from the record.

Q. Reverend Leverette, by the time of election was it public knowledge that you were a black running for office? A. Say what now?

MR. RAY: Objection to hearsay. That's the reverse side of the coin.

THE COURT: When you say it was public knowledge, I don't see how you can.

MR. MENEFEE: Well, Your Honor, I think we had a stipulation that pictures were regularly published in the paper.

THE COURT: You have that stipulation in there someplace but now you're asking him to get it to an area which is just completely hearsay. Objection sustained.

Q. I'll go directly to that. Reverend Leverette, by the time the election occurred was your picture published in the papers or campaign circulars? A. No, not my picture, and I never did, I never did get on television. They tried to get me on television and I never did get on television. I stayed off television.

Q. Was your picture ever published in flyers put out by the Democratic Party? [406] A. yes, my picture was published by flyers here, "Meet the Democrats."

Q. I see. Okay, sir.

THE COURT: What kind of a publication? Oh, that was just campaign literature that was passed out at the time?

A. This was just before the general election.

THE COURT: Yes, sir.

A. Probably a week before.

THE COURT: Yes, sir.

Q. And that was put out by the Democratic Party?

A. Right.

Q. Okay, sir. Reverend Leverette, would you describe your efforts to raise funds to conduct your campaign, what success and difficulty you had.

A. Well, I had a hard time trying to raise funds for my campaign. I'm pastor of a large church and our members, they helped me to raise campaign money. For example, I called several places. I called some of the banks and was telling them, you know, I'd like to have a donation to run for public office, and what they told me, said, "We ain't going to waste no money up on you," and they knew me.

MR. RAY: Objection, Your Honor; hearsay.

THE COURT: He is getting a little bit far on [407] this one too.

MR. MENEFEE: Yes, sir.

THE COURT: That was hearsay, of course.

Q. Yes, sir. How much were you able to raise to conduct your campaign, Reverend Leverette, approximately? A. Approximately twelve hundred dollars.

Q. I see, sir. How large is your church, Reverend Leverette? A. We have about a thousand on the roll. About six hundred fifty attend morning services every Sunday morning.

Q. Okay, sir, how did you conduct your campaign in the black community? How did you approach blacks in the community? A. Oh, I just asked them to vote for me and I said to them that I was running. I said, "You vote for the best man." This is what I done, just get out and asked them to vote. I went from door to door.

Q. Okay, sir, did you also solicit votes in the white community? A. Yes, I did.

Q. How did you do that? A. Well, I had some friends, for example, that was in 1969, the last of '69. There was a meeting held in Cordova Park by Dr. Ralph Chandler and several other [408] persons, and Reverend Brooks and Reverend Matthews and Mr. Marshall and their wives and myself, we was invited. So in this meeting there I expressed to them that I had, I was going to run for school board, and Dr. Ralph Chandler, he wanted to run for school board. After he decided I was going to run he said, well, he wouldn't run and he said I didn't have a chance, and so I said to him, I said, "Well, I'm going to run, chance or no chance. I'm going to run." So we had this meeting and out of this meeting I just made up my mind I was going to run.

Q. Okay, sir. Was your race a factor in your defeat in this election? A. Yes, I know it was. Up until, as I said, up until, just up until this went out, maybe I would have won the election up until this went out but after this went out I had members who works at Monsanto and the paper-mill and Navy Yard and different other places and people in other churches, and after this went out, when they say that I was black on this picture here, they come back and said to me, said, "Reverend," said, "They said they're not going to vote for you because you're black," and they thought I was white and they said they changed their mind and they didn't vote for me.

Q. How did other Democratic candidates fare that year on the Democratic Ticket? [409] A. Well, all of the Democrats won but two on here.

Q. Who else lost? A. Mr. Ray Meador, he lost, and Mr. Clyde Touart. All of the others, they won.

THE COURT: That was three of you? You were on there too?

A. That's right, I was on there too.

Q. What offices were those other two Democrats running for? A. One of them was running for sheriff, I believe Mr. Touart, and Mr. Ray Meador was running for state representative.

Q. Okay, sir. Was there also being held at the same time the governor's race? A. Yes, it was, 1970.

Q. And who was the Democratic nominee at that time for governor? A. You mean for governor?

Q. Yes, sir. A. Governor Reubin Askew.

Q. I see. And he was successful? A. Yes, he was successful.

Q. With this experience have you considered running again for at-large election in the county? [410] A. No, I wouldn't run, not unless something changed, not like it is now, because I wouldn't have a chance because they know who I am now. I can't fool them no more now. They know who I am. And then I've been discouraged so much by my own family and my membership. They said no use of running, say no use of running, no blacks can win. We have only one black, well, two blacks, have ever been elected to public office here in the county.

Q. Okay, sir. Thank you. During the campaign did you encounter any difficulty encouraging black citizens to turn out and vote for you? A. Black citizens?

Q. Yes, sir. A. No, I don't believe so, not the black.

Q. Okay, sir. A. I received some phone calls. I don't know who it was, though. I received several phone calls and still receive some phone calls.

Q. Just a moment, sir. During the campaign did you receive any threats or harassment? A. Yes, I did.

Q. Would you please tell us about those. A. I received several phone calls saying, saying, "You're too smart, nigger, you got to die." Said, "Nigger, [411] you're going to have to get out of town. You must not have been born here, Nigger. You must have come from somewhere else."

Q. Okay, sir. A. And then just hang up. I don't know who it was. They'd just hang up.

Q. Okay, sir. Did you approach any white political leaders for assistance during your campaign? A. Yes, I did.

Q. And what sort of response did you get? A. Well, Sheriff Bill Davis, he was in office then. He helped me some and I helped him some. I didn't get any finances out of him but just, you know, we kind of worked together.

Q. Did you, the night of the election when the results were coming in, have, what expectation did you have the night of the election when the results were coming in as to your success? A. Well, I had high hopes. I was leading.

THE COURT: Counsel, with all deference to you, any man running for office always has high hopes and high expectations. I don't know what that's got to do with anything about this case.

MR. MENEFEE: Okay, sir. Judge, I think there was a particular incident that Sheriff – [414] Williams and Don Spence, both of whom were elected to the city council. How do you account for their success, very briefly? Mr. Williams has won twice in opposed races and Dr. Spence has been successful one time for city council. How

do you account for their success in the city elections? A. Well, before -

MR. CATON: Your Honor, before the witness answers that question, I don't know that he's been qualified as an expert to give such a political opinion as to how he accounts for it.

THE COURT: I don't know that it's calling for expert testimony. This is giving what he believes is the reason for it, I believe. We can let him answer and you can move to strike it. If he gets to an area he can't testify you can move to strike.

MR. CATON: If I could just state my other grounds. Even if it's a nonexpert opinion then it has no relevance in this case.

THE COURT: I'm going to let him answer the question, sir.

Q. Thank you, sir. Go ahead, Reverend. A. Well, Hollice Williams was appointed first to the city council. After he was appointed to the city council he went in and Hollice Williams doesn't, he just

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TESTIMONY OF DR. DONALD SPENCE

[460] DR. DONALD DALE SPENCE,

Called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MENEFFE:

Q. Would you please state your name and address for the record. A. Donald Dale Spence.

THE COURT: What was the name? A. Donald Dale Spence.

THE COURT: You said F. L. Henderson.

DEPUTY CLERK: I'm sorry, Your Honor, somebody gave me the wrong name.

THE COURT: This is Dr. Spence?

A. Yes, sir.

Q. Your address, Dr. Spence? A. 617 North DeVilliers Street, Pensacola, Florida.

Q. Okay, sir, what is your occupation? A. I am a dentist.

Q. Okay, sir, when were you admitted to the practice of dentistry? A. Nineteen sixty.

Q. Where did you attend high school? [461] A. Johnstown Catholic High School, Johnstown; Pennsylvania.

Q. And college? A. Morris Brown College, Atlanta, Georgia.

Q. Graduate school? A. Howard University, Washington, D.C.

Q. When did you finish at Howard University, please? A. Nineteen sixty.

Q. Nineteen sixty? A. Yes, sir.

Q. When did you come to the Pensacola area? A. I came to Pensacola in 1950.

Q. What occupation did you have prior to becoming a dentist? A. I've been an insurance agent in Pensacola. I've been a high school teacher, a high school principal, Naval Air Station apprentice, Naval Air Station licensed mechanic and a practicing dentist and a newspaper reporter.

Q. Thank you, sir. Dr. Spence, would please tell us on what occasions you have offered yourself as a candidate for public office. A. I have been a candidate for public office in Escambia County, Florida, on three separate occasions. [462] I've run for the city council on Pensacola twice and I ran for the Escambia County School board once.

Q. Okay, sir, and when was the first time that you ran for the Pensacola City Council? A. Oh, I think it was 1964.

Q. Sixty-four? A. Sixty-four or sixty-three.

Q. Okay. And when was the second time that you ran for the Pensacola City Council? A. I think it was about '75, '74 or '75.

Q. Okay, sir.

THE COURT: You said the county commission, I believe, Doctor. A. No, sir, I said the county school board.

THE COURT: You ran twice for the county commission? A. No, I ran twice for the city council.

THE COURT: City council. Thank you, sir. I was a little mixed up. And once for the school board? A. Once for the school board.

THE COURT: All right, sir. The first time you ran for the city council was when, did you say? A. Sixty-four.

THE COURT: All right, sir.

MR. MENEFEE: Excuse me, Your Honor, that was [463] 1963. I think that's correct.

THE COURT: Do you accept his correction? A. Yes, sir. Yes, sir, '63 or '64 term, something like that.

Q. And then in 1976 did you seek election to the county school board? A. Yes, I did.

Q. Dr. Spence, have you been active in politics other than on these three occasions? A. Yes, I've served on campaign committees for Haydon Burns and Senator Stone and I've tried to help Judge Joseph Hatcher and any number of black candidates that have run I've helped, so I've been active in politics, either running or trying to get people registered to vote or trying to instruct people in the need for voting or trying to help other candidates get prepared. So I think that all of my life in Pensacola I have been concerned with politics and I've been very much active in it.

Q. Okay, sir. For the record, are you black? A. Well, I guess so. I really, the term "black" eludes me in a lot of cases because I think that being perfectly candid, when you say black, I'm a Negro.

Q. Okay, sir. A. And to me the term, classifying all

blacks, [464] all Negroes as black, to me is not a good term because when I was a child coming up if you called all Negroes, "You are black," you would get a black eye from it. I was taught by my mother and father to call people by their names and the term, "Are you black," and all of the blacks believe this, it doesn't ring a good bell with me. So I'm a proud American Negro.

THE COURT: You make the distinction between Caucasian and Negro races and not between black and white races? Is that what you're telling me? A. That's what I'm saying.

THE COURT: Thank you, sir.

Q. Thank you, sir. I just wanted it to reflect in the record. Dr. Spence, you've just told us you've been active in some efforts to encourage voter registration. Would you please describe some of your efforts there and give us some dates when you were active. A. Well, you can just name all of the years and I can look out in the audience and I can remember the weekend that Reverend Kendrick's wife and myself and Miss Sue Lewis sitting over there and some of us put approximately nine hundred minority voters on the books, going house to house and so forth.

THE COURT: That was in a voter registration drive? [465] A.Voter registration drive under the auspices of the NAACP. And I see Mr. McCray. We tried some of the, we had a black Jaycees here some years ago and we started Little League baseball and we also pushed off into a voter registration drive. I think that every time you meet with a group of ministers we talk about what can we do to get people registered to vote. So I think for black professional man in Pensacola or Escambia County, I think that your whole life, if you believe in politics, I think every day

you live the life of trying to upgrade our people into registering and voting. And I think that you just are involved almost intimately with all of your contacts, your social clubs, your fraternities, your churches, just a constant thing, "We need to vote, we need to take care of our heritage."

Q. Okay, sir. Dr. Spence, what prompted you to seek election to the city council in 1963?

A. Well, when I came to Pensacola, I came to Pensacola as a teacher, insurance man, and became a teacher, and one of my students was Charlie Taite and Charlie Taite at the Adult Veterans School, I'd heard rumors down through the years in Pensacola of the great injustices that were done at a particular time. I don't know the details of it. It was sometime in the space of first black man to run for an office in the City of [466] Pensacola was given a great injustice due to the fact that when he went to bed at night there was almost a tie race or the black candidate was way ahead of a very knowledgeable, influential white person and the next morning when he woke up, the election was all, you know, the other way around and the black candidate, who happened to be Charlie Taite, was soundly defeated. And whenever I would have a social studies class, in those days in high school you taught science, English, math, whatever, you taught the course out of secondhand books but you had to teach the course, and I'd say, "let's have a social studies discussion." Then automatically it would be, "Well, what about whites and blacks in politics. When a black person votes, does it really count?" And then I would say, "Why, sure," and I could quote the list of presidential elections where one vote turned the election around and so forth and say, "Your vote does count," and invariably I'd be slapped in the face,

"Let me tell you one about what happened in Pensacola," and then that Charlie Taite got beat and the election was, they thought, taken from him, and they said, "Well, Doctor, Mr. Spence, why don't you, you know, run for election for something?" And I think down through the years this was in the back of my mind. So I went off to dental school and came back and when I [467] came back there was a cry in Pensacola, "Black people need to get involved in the political aspect. You need to do this, you need to do that. Dr. Spence, you are the one to do this. Dr. Augustus put out the school board suit. Mr. Jones did this. Now it's your turn to pay your more or less dues to the community. You can't be hurt. You work for yourself. I can't do it. I work for the City of Pensacola. I'll lose my job. I can't do it. I work for the school board. They'll fire me." Or if it's a lady, "I work for Mrs. Anne, and she wouldn't have me back if I do so and so. You are the one. They can't get you, Doc, so you run and we will back you." So I had an innate desire to be in politics. I love my country and I love Pensacola and this county and I think if I'm going to make my living here, if I am to take from what Escambia county has to give me, I think that I owe it to Escambia County to serve on some of its boards to help set the policies of this county. I think it's every black man's duty in this county to register and to vote and to run for public office one time in his life, whether he's beaten or not. I think he should run. I think you should try to give something back to the county that supports you. I make my living here. I reared my children here and I want to help set the policy here, and I did this out of a commitment [468] to my county and my country.

Q. Dr. Spence when you made this decision to run, how did you assess your chances? A. Well, when I ran for city council the first time, you're speaking of?

Q. Yes, sir, 1963. A. Well, when I ran at that time there weren't as many blacks registered to vote as there were now. There was still a certain fear possibly in the hearts of some people from the old school about registering to vote and getting involved and so forth. You'd see them at the poll, you know, but I thought the people I knew, and I thought I was a pretty nice fellow and easy to get along, and I thought I was reasonably intelligent and I thought I could read and write and I thought that I could, you know, contribute to the county, I mean to the city council. I also was aware of the fact that the man I as running against was a pretty strong candidate. I thought that I would run close under him at that particular time.

Q. I see. What were the results? A. If I'm not mistaken I think I ran in a runoff with him and I think he, I ran in the runoff, I'm pretty sure, and he beat me in the runoff. I got a runoff with him and he beat me and he went on to become the Mayor of Pensacola.

[469] Q. Dr. Spence, how did you conduct your campaign in 1963? What sort of media did you use? How did you contact the voters? How did you raise funds and what success did you have? A. Well, I didn't raise many funds. You know, it isn't too fashionable, not too fashionable, I would say, among people in the lower income brackets to give a lot of money to political campaigns. They'll give you their vote but at that first election I don't think I had much money. I think the way I got around, I went to my fraternity, my church, my friends, and asked them to pass the word around, "Let's get some pride up," putting me there. I didn't know many people of the other race to talk to except the ones I worked with at the Naval Air Station. No, I wasn't working at the Naval Air Station, excuse me. Patients that I would see and people that you would meet in just your general walk through

life. So I didn't have any money other than what I had in my own pocket for this political campaign. I probably have, as I did in all my campaigns, I made the cardinal sin of not attacking my opponent. I've never attacked another opponent I've run against. When I ran for the city council, I wanted the citizens of Pensacola and Escambia County to elect me, and I've said this on all offices I've held. I don't want you to think of me as just being a [470] Negro candidate on a board. I want you to think of me as a thinking person who can do something for you. I don't want you just to say, "I'm going to vote for him because he lives on my street." I want you to say, "I want to vote for him because I saw him figure out this problem. He did pretty good." So I never attacked anyone that I ran against. I knew plenty of things that I could have used and they probably knew some things they could use but in any of my campaigns I never had any personal attacks and neither did I make personal attacks. I just stated, "I wanted to be your candidate and I'm qualified. I'll do a good job and I'm alert," and so forth, and that's the way I campaigned.

Q. Okay, Dr. Spence. When the results were in, and now looking back on it, how do you assess the fact of your race as it interacted into the results of the election? A. Well, I've made many mistakes in my life and I made a very big mistake right after the first time I ran for city council. I remember very vividly I was called on the, I was at a victory party and a friend of mine, Calvin Harris, who died, and we were having a sort of a semi-celebration, and I remember, I don't know whether Mr. Morgan called me or someone from WBOP called me and they said, "Dr. Spence, how do you feel? You've just been [471] beaten for your city council election. How do you feel at this time?" And I became very, very indig-

nant because I said that in somewhat frenzy, I remember what I said and they washed my face with it for fifteen years, I said, "If the black people in this community would get up off their seats and vote that we could turn this county around and I could have won this election if you had done what you're supposed to." And of course I didn't say it as nicely as that. And of course my friends told me about that down through the years, "Dr. Spence, so and so and so." But lately after I became elected to office and I had access to records of things I found out that the black people in Escambia County, and I must apologize for my years then, the black people in Escambia County can be applauded because based on percentages they've done as well as anyone else in voting. Every race that I ran for election, my people came forth and voted for me in black or nearly all-black precincts to the tune of approximately 94, 95, 96 percent. When a white candidate ran in the same precinct when there was no black candidate running, they voted three or four percentage points lower. In the white precincts I didn't do as well so I must apologize to my black constituency. They voted, say on, based on a hundred voter basis, when I was running or some of the other black candidates were running, they [472] would vote 28, 29 percent, anywhere betwen 25 and 29 percent of the black registered voters. The white registered voters in this county vote 25, 26 percent. So I'm saying that when I was running black people came out. They voted to their capacity, so I apologize. The black people did stand behind me. They did vote, but I didn't have a chance with just those five precincts.

Q. Doctor, back to my question. Was your race a factor in your defeat in that election? A. I would think so.

Q. How would you describe it, as a major factor, a minor consideration? A. I would make a statement in

my personal opinion if the Lord himself was black and ran for political office in Escambia County he'd be defeated.

Q. Okay, sir. Dr. Spence, let's move on to the most recent city council race. You were appointed to the city council in 1974, I believe. Would you please tell us how that came about and then we'll get into the election itself. A. Well, I don't know exactly how, If I may digress, I don't want to take up too much of your time but I think law is probably something like history. You've got to go back and go back to how it first came. The first time that, when right after my defeat for the city council, [473] two or three months later or whatever time frame it may be, there came a vacancy on the City Council of Pensacola. The particular candidate that defeated me called me on the phone and he said, "Dr. Spence," he said, "I respected you because of the fact that when we had our race you didn't attack me as a black man attacking a white man because we were running for the same job and we just talked about what you could do and what I could do." And he said, "And I'll always respect you as a gentleman and I'll always respect you as a man and now I want you to do something for the City of Pensacola." He said, "There is a vacancy on the city council and there are certain people in the community feels that it's time that a minority takes its place in the politics of this county and we feel that if we could get a black person appointed to the city council at this time there would be a fairly decent chance that he would be elected in the next election and we would have our foot in the door of Escambia County-Pensacola politics. Would you accept the job on the particular city council?" I told him, I said, "Well, you know, I'm a Sagittarian and I don't particularly like gifts but I probably would, you know, consider it, if you gave me the oppor-

tunity. I'd hate to say that I couldn't get elected and I had to be appointed."

Q. Excuse me, Doctor, about what time frame is this?

[474] A. I would say this is right after I ran for the city council and lost. I would say it would have to be about a year. All right, they checked it out and they come to find out that District Five runs from "A" Street, District Five runs from "A" Street west to the end of the city line and District Four picks up at "A" Street and comes east, going east to, I think, all the way over to Sixteenth. I'm not sure. I think, all the way over to Sixteenth. I'm not sure. I think that's the frame. So they told me that since I live one block east of "A" Street that I could not be appointed to the city council because the man that left the city council was from District Five. So the gentleman asked me then, "Will you form a committee that will search the black community to find a man that would be acceptable to be appointed to the city council?" And we had the meeting in my office on DeVilliers Street. Let's see, I don't know anyone here that was in that particular meeting but I know we came up with the candidates for this particular office. We recommended, I think it was Benno English and we recommended Hollice Williams and we recommended the little fellow, I forget his name, but anyway, recommended four persons. So I called the gentleman back and told him we'd come up with these four people, and he said, well, Hollice Williams was well [475] known and quite acceptable and that there would be a possibility if there were no, anyone in the black community that had anything against this, that more than likely they could get it through that Hollice would be appointed, and that's when Hollice Williams was appointed.

Q. Now, that was 1971 that he was appointed? A. Was it?

Q. Or seventy? A. Was it?

Q. Nineteen seventy? A. Well, whenever it was, the same man called me in the time frame. So after Hollice served on the board then the other vacancy came up. Mr. Hagler resigned to run for the House of Representatives. There came another cry that, "This is in your district and would you serve if you were, you know, appointed?" And then I think it came down to the city council has to vote on whoever it was and then one city councilman put me up. I don't know who put me up for appointment but then another city councilman put another candidate up and then the city council voted between the two of us and I think I won six-four on the first ballot and unanimous on the second and then I took my place on the city council.

Q. Okay, sir.

THE COURT: Now, was the other man white or [476] black, Doctor?

A. The other fellow was white.

THE COURT: So that in that case in that city council the black man came out ahead?

A. In that particular case, yes. I did win the appointment.

THE COURT: Yes, sir.

A. Over the same candidate that I ran for election, I ran against him in the election the following year.

THE COURT: You had run against him in the following year?

A. I ran against him right after I was appointed. Then the next time I had to run for city council I ran against him.

THE COURT: Did you beat him that time?

A. I beat him that time.

THE COURT: Then it is not true that a Negro cannot get elected here?

A. Well, in this particular case I don't think that, the only reason this man had any chance at all, he had the right family name. When I first started to run against him, they said, "You won't be able to beat him because the Gilmore name is a longtime Pensacola name and you'll get beat just because of the name." And they [477] come to find out he was not from the local Gilmores and he wasn't very well known and he had switched from two or three jobs and –

THE COURT: Race was not a factor in that election then?

A. In that particular race I don't –

THE COURT: Or was it? You were elected?

A. I was elected so I would say I didn't get all the votes because I was black because if I'd been white I would have got them all. Now, I think I beat him by a thousand.

THE COURT: You got most of the black votes but you also got some white votes?

A. I'd say I carried five precincts.

THE COURT: You carried five?

A. Five precincts that had more white people in it than black.

THE COURT: So that there were white people voting for you?

A. Right.

THE COURT: And not voting for your white opponent?

A. But there were eight precincts. There were eight precincts, all-white precincts, that voted for a man that in my opinion had no business in the race. Eight [478] all-white precincts voted for this gentleman and they knew nothing about him. Only five precincts, I don't know whether I carried the five, I know I scored votes in those five precincts, but there are thirteen, in Pensacola there are thirteen predominantly all-white precincts and in those thirteen precincts I lost eight of them to a man that nobody in town knew that well.

Q. And you were running as an incumbent at that time? A. I was running as an incumbent.

Q. Dr. Spence, who was it from the city council or leadership in the city that was interested in seeing a black appointed to the city council, what individuals? A. Let me see. I would think that, I don't know, I'd hate to say. My gut feeling would be that possibly Barney Burks — could I call on counsel over there, Mr. Caton? I think it was Mr. Burks was the one I thought, probably Mr. Burks and Howard Mitchell and Carl Mertins and Vince Whibbs. I think those were the four that wanted it.

Q. Now, Dr. Spence, when you were relating the meeting that you had in your office to suggest names to Mr. Burks and the others —? A. No, no, you're talking about my appointment [479] or Hollice's?

Q. Well, I assume that it was the same individuals? A. No.

Q. Okay, the individuals you just named, Mr. Burks and the others, when was that? A. That was for when I was appointed.

Q. I see. Who was it when Mr. Williams was appointed? A. Mr. Williams was appointed, it was Charlie Soule.

Q. Okay, sir. A. Charlie Soule and his group.

Q. When you were relating that meeting, you said that you and the others who met with you attempted to come up with a list of three or four black citizens who were acceptable. What do you mean by acceptable? A. Well, I would say to be acceptable would be a person that had some name recognition in the white community and someone that they just didn't detest and someone that the could live with and someone that quite a few of them knew and someone that had an outside chance of being reelected, and I would think if you would just name someone that no one, someone that just walked in to town and no one knew him and he didn't have any roots here [480] at all, that wouldn't particularly be a good candidate, or someone that had skirmishes with the police or different things like that. So we thought it would have to be someone that was more or less an upstanding, outstanding citizen.

Q. But did you consider black leaders who had been active in civil rights movements as being acceptable? A. Well, I know, I don't think that the history of the town speaks that our black leaders that have gone out on a limb, will never be appointed to boards, certainly not to elected official bodies. We've had many opportunities to appoint some of our outspoken leaders and they're never appointed.

THE COURT: Doctor, it's true too that there haven't been many Ku Klux Klan members appointed to those boards either?

A. Well –

THE COURT: I guess you see what I'm driving at, sir. People like yourself and Hollice Williams who were not so way out front trying to promote blacks regardless of

merit, perhaps, perhaps not the right word, but were really so aggressive, may have had problems getting appointed, just like people who represented the other end of that spectrum, for example, I haven't heard [481] of many of them getting appointed. But people like yourself and Hollice Williams have been appointed, have you not? A. Yes, I was appointed.

THE COURT: I give you another example. If General Chappie James had come back here and wanted to run for office is there any doubt in your mind he would have gotten by far the majority of votes in this county, both black and white? A. I don't believe he could have won a county commissioner race.

THE COURT: General James?

A. No, sir. He might have won a House of Representatives race but I doubt if he could have won a county commissioner's race.

THE COURT: Why do you say that?

A. He would have been beat before he got above Nine Mile Road.

THE COURT: Why do you say that?

A. You might have had other people from the whole district who would vote for him on the merit that he contributed to his country.

THE COURT: Why would he be elected to the House of Representatives?

A. You would have a wider spectrum.

[482] THE COURT: The same people would vote for him. The House of Representatives members are elected in the same election as the county commissioners.

A. Aren't the House of Representatives elected from some of the other counties too? Say whether Chappie was running for Bob Sikes', he may come from Okaloosa.

THE COURT: It may cross the line

A. It would cross the line. The point I'm trying to make here, Judge, I don't know about how many Ku Klux members are appointed to some boards. I've been around some boards when they said that, well, they look at them a long time, but, see, I would say that Chappie might could win with the Eglin population voting for him and some of the Fort Walton people, some of these people that have moved down from Northern areas and so forth. They may just take the man at his image, but I'm saying from the Nine Mile Road to the Century line there's not a chance for a black candidate. When I ran for school board and I was in that hospital bed, they came down and told me, said, "Dr. Spence, you lost the election. How do you feel about it?" I said, "Wait a minute, wait a minute, how am I going to lose the election? They haven't counted District Four downtown." They said, "It doesn't make no difference. You got wiped out in Cantonment. You [483] got wiped out in twelve and eleven. You got wiped out in MaDavid, you got wiped out in Century, you got wiped out up there." They started bringing in the votes, they come in close, and, Buddy, when you start going to Nine Mile Road the sun is shut off, and Chappie would not win a county commissioner's race in this county unless every black person voted for him and he carried the thirteen white precincts in Pensacola and then I would like to look at the statistics to see if that would be enough to offset that fifteen hundred votes out of twelve. I think there's sixteen out of eleven, that polling place right off where 29 goes this way and the new roads go through there and they sit and vote there; they kill your black candidates right there.

That's where they kill them. That's where they execute them, right there.

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[496] Q. Dr. Spence, while you were on the city council did you find that black citizens who lived outside of your residency district would come to you with problems concerning city government? A. They would, yes. Anyone in Pensacola feels that any black man that would be on that city council belongs to them no matter where he lives. They just come to you and ask you, "What can you do about this?" You know, I'm your councilman. They don't care, because actually he voted for me. Now, in the City of Pensacola you don't have voting, well, you know that; no need of me going in that. You just have to live there, but everybody votes for you.

Q. That's why we're here, Doctor. A. Okay.

Q. Did you also find that to be true when you were on the school board; that is, that black citizens throughout the county would come to you and ask you for help on school matters? A. On the school board I was plagued with requests from teachers. The black teachers in Escambia County feel intimidated in my opinion and blacks, yes, sir [497] black principals, mothers of students that are being expelled, blue collar workers that didn't receive promotions or contracts, those were the type; bus drivers that didn't, those are the type things you would hear.

Q. Okay, sir. A. They didn't care what district I was from. They would come to the only member they had.

Q. Dr. Spence, if we can, let's move on now to your appointment to the school board. Can you tell us how that came about, please, sir? That was 1975, I guess. A. I was rolling along with a nice city council election with two years of nothing to do but reading city manager's reports

and rubber stamping the budget and making a few suggestions that never got out of committee when the Governor of the State of Florida decided that if Escambia County and Florida as such is going to move up into the upper stratas of national politics and human rights that it was far time that there would be a minority placed on one county office in this county. At this particular time there was a death of a very beloved school board member and there was an opportunity to appoint a black man to this particular job.

Q. For the record, Dr. Spence, who was that that passed away? [498] A. Mr. L. D. McArthur.

Q. Thank you, sir. A. At this particular time the Governor's Office tentatively appointed a replacement for Mr. McArthur and there was some difficulties involved with the appointment and I got a long distance call and I was asked, "Would you consider running for this particular office," I mean, "Would you consider accepting an appointment if the Governor would accept you?" And I said that, you know, "I've just been elected to the city council and there are some things I want to do with the city but I do know that there are many things that need to be done on the school board." And I was told, "Think about it and we'll get back with you and we'll run a check on you and so forth and then we'll see." All right, in the meantime I was advised by my constituency if a black candidate can have a constituency, whatever I had for a constituency advised me not to bother around with that school board thing over there, "Because you'll get your neck chopped off over there because it's a vicious, vicious atmosphere over there because everybody is clamoring. It's teachers against students, students against teachers, et cetera, et cetera, definitely black against white, and every time there comes a decision before that board where you have to

make a decision if [499] there's a black involved, if you take the part of the black they'll say you're a rubber duck official and no good and if you don't make it in favor of the white constituency you'll lose your reelection." Anyway I decided, weighing the factors, if I'm going to live in this county and work in this county I've got to pay my dues and I'm willing to take the risk, and I decided the decision at this particular time for the good of this county and this community and my race it would be more important for a black to run and to be appointed to the school board because we already had a black person on the city council and I thought we needed one there. And there was an outside chance if you were appointed you might get reelected and there would be a chance that you could open up the doors and maybe we could round this school system into what we would want it to be. And I accepted the appointment.

Q. Dr. Spence, thank you, sir. About how long did you serve on the school board? A. Two years.

Q. Okay, sir. During that time that you were on the school board did you have occasion to propose an affirmative action plan for hiring on the school board? A. Yes. I look back on my days at the school board and I'm just tickled to death because everything –

[500] MR. RAY: Judge, Yout Honor, this line of testimony exceeds the scope of the pretrial stipulation on responsiveness.

THE COURT: In what respect? I don't know.

MR. RAY: Excuse me, Your Honor, it does not have to do with – let me get the pretrial stipulation. Appointments to nonemployment type advisory boards and committees, expulsions and suspensions and administrative –

MR. BLACKSHER: Promotion to administrative positions was one of the things that was contested.

MR. RAY: Appointment of administrators.

THE COURT: Well, if you all can't settle it between you I'll take a look at it. I don't remember the stipulation that well.

MR. RAY: It's a mention of affirmative action program.

THE COURT: Well, I assume the affirmative action program is a statement of hiring more minority people in positions with the school board as teachers and administrators and that kind of thing.

MR. RAY: Perhaps if Mr. Menefee could inquire as to what Dr. Spence had in mind in that program that might solve it.

THE COURT: Ask him. When you said affirmative action program, what are we talking about?

[501] A. Well, Mr. Ray is very familiar with it because he, okay, I'm sorry, Judge, you're right. But I was a member of the school board, Judge, and I proposed that the Escambia County School Board, in line with federal policies, establish an affirmative action program for the Escambia County School Board. The school board passed –

THE COURT: You say affirmative action program. You mean by that to recruit more minority, members of minority races in positions of employment with the school board? Is that what you were talking about? What do you mean by affirmative action program?

A. To set a policy. To set a policy stating that the school board would judge each applicant fairly according

to guidelines of the affirmative action program, that there would be equal appointments for positions not regardless of race and so forth, the whole spectrum of the school system, purchases, hiring, firing, the whole thing.

THE COURT: All right, sir.

A. Under the affirmative action program.

THE COURT: Mr. Ray, that's what he's talking about. Do you have objection to that?

MR. RAY: Your Honor, I was under the impression that Dr. Spence had in mind more of a program that granted

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[512] trial of a case before me, if I were to say there was no evidence for a verdict and render judgment, you tell me I have no perception of it. He says there was no evidence at all. That's what he said, and went into details, that there was no one testified that that boy had the knife or cut him, that there was simply no evidence to that effect. I don't consider that getting into – he was the man sitting at the trial and that's his version of it. You'll have an opportunity to contest it when it gets to you, sir. I don't understand that objection. The objection is overruled. Proceed, Mr. Menefee.

Q. Now, Dr. Spence, your candidacy in 1976 for the school board, who were your opponents in the Democratic Primary? Do you remember? A. I ran against Dr. Smith and Mrs. Carol Ann Marshall.

Q. Yes, sir. Were either of these opponents, had they sought election to public office before to your knowledge? A. Mrs. Marshall ran against Mr. L. D.

McArthur in the previous school board campaign. I'm not familiar with Dr. Smith's record.

Q. Okay, sir. What were the results? Who won the first Democratic Primary? A. The first primary Carol Ann pulled sixteen [513] thousand one votes. I pulled fifteen thousand nine hundred ninety-six. Dr. Smith pulled ten thousand two hundred approximately.

Q. Okay, sir.

THE COURT: You led? You were first or second going in?

A. I was second.

THE COURT: Second?

A. By about twenty votes.

THE COURT: Twenty votes?

A. Twenty or thirty, something like that.

Q. And what were the results as best you can recall? A. The runoff between Mrs. Marshall, she pulled twenty-nine thousand sixty something. I pulled nineteen eight, or twenty thousand.

Q. What kind of campaign did you conduct in that election? A. I did the usual things most candidates do in Escambia County. We went to rallies and went to the social clubs and we talked to friends, and television appearances, et cetera.

Q. Did you have much, were you able to raise funds for your candidacy? A. I raised some funds. I don't know, my [514] approximate raising, you can find out from the, I don't know exactly; a couple thousand dollars.

Q. A couple thousand dollars. Thank you. Dr. Spence, do you think your race was a major factor in your

defeat in that election? A. I think it was the only factor. I just feel that the racial atmosphere due to the frequency of the vote down through the last twenty years in Escambia County showing the position of voters above Nine Mile Road has clearly stated black candidates don't have any chance or stature and even proven to the point that in the previous city council election when I pulled, there's only been two black candidates in the history of Escambia County to pull an all-white precinct, Hollice Williams and myself; I pulled five precincts in the city council race in, well, 1974-75 and those same precincts that voted for me in the city council race, in the school board election race I didn't carry any of them. But when the reports came in, the TV stations and radio stations called me before any of the City of Pensacola precincts were posted and they told me that, "You were beat," and I was beat when precinct twelve came in.

THE COURT: Doctor, you say that in the school board race you didn't carry those five precincts you carried [515] in the city race?

A. No, sir.

THE COURT: What do you assign that to? You don't assign that to race then, do you?

A. I'm thinking that this was, I think, and I know it's bad in law, sir, I think it was racially polarized because I'm the same man they voted for in the city council race. I'm the same person.

THE COURT: That's my point. They once voted for you and next time didn't. How can you say there was racial polarization as far as you're concerned? They never would have voted for you the first time if they felt that way.

A. I think the first time I ran the other candidate

didn't present any image at all but in this particular school board race I figured the two of us ran that were running so close up, that I felt after the first primary, I figured that Mrs. Marshall would split the ten thousand between her; I figured Dr. Smith pulled ten thousand and we both pulled twenty thousand. I figured that according to my way of figuring politics and percentages and so forth that she would have pulled approximately five of his and I would have pulled five and it would have been a matter of twenty-five thousand apiece going in and we'd have split people that came to the [516] second primary that didn't come, but it didn't come that way. The way it came, I stayed almost level and the ten thousand that the other white candidate came about went all to the other white candidate.

Q. Dr. Spence, do you think the fact that you were, well, let me rephrase this. Were there events, the ones we've already discussed such as student discipline matters, school board policy matters, that came up between your election to the city council in 1975 and your candidacy for the school board in '76, also the Rebel flag incident? Were those events a major factor in your candidacy, the way voters perceived you in 1976? A. Well, definitely. This is a Southern community that has great roots, more, say, in racial symbols and differences and so forth, and when I was on the school board when the particular incident, I imagine you're referring to the Escambia High School incident, I remember very vividly where I was and what I was doing at the time that I heard the news. I was at the city recreation gymnasium at a basketball game and somebody came up and told me that the voting at Escambia High School went such and such a way and right then and there I said, well, I said, "There is going to be a lot of controversy down the line." If I had voted –

[517] MR. RAY: Your Honor, we object to this line of testimony on the basis that the Escambia High issue was an issue involved in the *Augustus* litigation in this court. That litigation has been excluded pursuant to the pretrial stipulation.

THE COURT: That I agree with, Mr. Ray, but we're not talking about that phase of it; we're talking now about the election afterwards and that was not excluded. As a matter of fact if you want to exclude it, it might be a little to your disadvantage. We're talking about, in fact I shouldn't say that, but I was getting ready to ask him a question a little later if you didn't about the election. He said that he was turned out of office, he thinks, because of the racial factor in that election after the controversy came up. We're talking about the election and that's all. We're not going into –

MR. RAY: I perceive Dr. Spence going into a description of what that controversy was and how he voted.

THE COURT: We don't need to go into that. That's been stipulated before us. We're only interested as far as that's concerned on the election and what happened in the election and that kind of thing, Doctor. Mr. Menefee, I think that's correct, is it not?

MR. MENEFEE: Yes, sir.

THE COURT: We don't want to get into detail on that.

[518] A. I'll just say I felt very definitely my pursuing that, the nickname situation at that particular high school, very definitely was to my disadvantage as a politician.

THE COURT: Well, all right, sir. Go ahead.

A. I would say that it wasn't popular to conduct yourself in the manner that I did on the school board dur-

ing this particular controversy. I would say that it was not racially popular.

THE COURT: Well, isn't it true that there were three of you who were running for election after all that controversy, the other two being white? All three of you were defeated for election.

A. Right, but I don't want to get into it.

THE COURT: You don't think that means anything to you? You have no idea or thought that the people of this county, black and white, were so tired of what had gone on out at that Escambia County School Board that the voters in this county, black and white, were saying, "We're not going to reelect incumbent school board members"? You don't think that was a factor in that race?

A. No, sir, because I acted like a pure gentleman in that race and I'm going to tell you –

THE COURT: My point is that, well, I thought I [519] said it, that there were people in this county who had gotten awfully tired of that situation at Escambia High School that had gone on so long and that, rightly or wrongly, they were saying to the school board members, "You let this thing go on so long," and that that was a factor in the defeat both of you and the other two incumbent school board members in that race. All three of you were defeated.

A. I don't think so. The reason I don't think so –

THE COURT: You don't think that was the problem?

A. I don't think that . The fact was this. When this particular thing came up, I was asked by people in this community to try to resolve this particular thing. Now, the other gentleman lost his election. There were two of us running, I think, just two.

THE COURT: there were three. I believe I'm correct.

A. Just two, Carl West and myself.

THE COURT: Weren't there three?

A. No. Carl West and myself. Gindl, Leeper and Bell stayed there.

THE COURT: Just two. All right, go ahead.

A. Carl West had been there several years and [520] when this particular thing came up we said, "We want to solve this particular problem." I wanted to solve it because people getting whipped out there and getting hit out there were black people. The people being abused were my people, so there's no reason in the world, me as a black politician, trying to represent my people, wanting this thing to continue. All I wanted for black children in Escambia High School to get was a quality education. I'm not going to preach that but I was asked, "Dr. Spence, why can't we settle this thing gentleman to gentleman?" Carl West was told, Carl West was told by the powers to be and he sat right beside me and we talked about it and he told me, said, "Don," he said, "This is –

MR. RAY: Objection, Your Honor. Hearsay.

A. Okay, I'm sorry.

THE COURT: You're going a long way from answering my question. I mean all the things that went on in the school board meeting have nothing to do with the question about what caused the defeat of yourself and Mr. West there.

A. I feel I was defeated because I was black. Mr. West did not campaign. Mr. West did not attend a single rally. He did not do anything to be reelected.

THE COURT; You don't agree with the contention

made by counsel in this case that the fact that you and [521] Mr. West had gone in there and had stood by your guns and knocked out that Rebel name, that that was a factor in your defeat? You don't agree with that then?

A. Yes, because –

THE COURT: They say it was a factor in the defeat of both you and Mr. West. You don't agree with that?

A. I say, I'm saying it was a factor but I think it was a racial factor because the black people still voted for me. My black constituency held true to 96 percent.

MR. MENEFEE: Judge, may I?

THE COURT: I'm going to turn him back to you, sir. You go right ahead.

MR. MENEFEE: Well, Your Honor made the observation the voters of Escambia County had perhaps disgust or whatever with the incumbents –

THE COURT: That's right. I was suggesting that a factor in his defeat and Mr. West's defeat was the possibility or the probability that the people of this county, black and white, had gotten pretty tired of that situation at Escambia High School and, rightly or wrongly, were blaming members of that board for it and voting against them in an election for that reason, and he says he doesn't agree with that.

[522] MR. MENEFEE: Plaintiffs' exhibit 15, the regression analysis, the scattergram for Dr. Spence's election or campaign, shows that of those five precincts that are in excess of 90 percent black they gave Dr. Spence in excess of 90 percent of their vote.

THE COURT: I understand that. Nonetheless other people in the county didn't vote for him and didn't vote for Mr. West and I was just approaching that phase of it.

MR. RAY: Your Honor, if Mr. Meneffe –

THE COURT: He says he does not believe that was a factor, and let's go on.

MR. RAY: Will I have a chance to present argument at this point?

THE COURT: You're right, sir. We'll ignore that and we'll go ahead. Mr. Menefee, let's get back to interrogation.

MR. MENEFEE: Okay, sir.

DIRECT EXAMINATION RESUMED

BY MR. MENEFEE:

Q. Dr.Spence, going back to your appointment to the city council in 1975 or 1974, and then you ran in 1975, do you think it helped your candidacy, the fact that you had been appointed to the city council before you ran? A. No question about it. I would never have made [523] it if I hadn't been appointed.

Q. Dr. Spence, you have several times referred to the area above Nine Mile Road in connection with your race for the school board. If you would, how would you assess the chances of a black candidate running in the City of Pensacola, all of which is below the Nine Mile Road? A. Well, I think that a black candidate running in the City of Pensacola at this particular time, if he didn't carry half of the thirteen predominantly white precincts, he couldn't make it

MR. MENEFEE: Thank you, sir. I have no further questions.

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TESTIMONY OF BILLY TENNANT

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[573] DIRECT EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Tennant, could we have your name and address, please? A. B.G. Tennant, 4 Teakwood Drive.

Q. Are you presently employed by the Escambia County Health Department? A. Yes, I am.

[574] Q. What is your position there? A. I'm director of Environmental Health.

Q. Mr. Tennant, how long have you lived in Pensacola? A. Well, since 1936, but I'm a native of the county.

Q. Mr. Tennant, were you in recent years appointed by the Escambia County Commission to a committee to study charter government? A. Yes, I was.

Q. What year was that? A. Approximately three years ago.

Q. All right, did you become the chairman of that so-called Charter Study Committee? A. Yes, I did.

MR. BLACKSHER: Does the Court need any kind of development of what charter government means?

THE COURT: I think not.

MR. BLACKSHER: Or we can just presume everybody knows that.

THE COURT: Unless somebody wants it on the record, come to think of it. We might ask Mr. Tennant, tell us very briefly what charter government is, its overall concept as opposed to other types we have now.

A. The overall concept of charter government is to [575] bring home rule to county government. In other words it's a constitution for the county government similar to the state constitution or United States Constitution.

Q. Can we agree the Constitution of Florida provides alternative government forms for counties, either the form under the general laws or a charter form which provides more autonomy for the local government?

A. Yes, it does.

THE COURT: It's not as opposed to consolidation of government? I was thinking it had that aspect.

A. Well, it could be consolidation but it could also not be consolidation. It could be either direction. It could allow for the cities to remain as they are or it could, a charter could consolidate the city and county government.

THE COURT: That ought to be enough for record purposes, I would think, don't you agree?

MR. BLACKSHER: Judge, I think the story is that there were a lot of other voters in Escambia County who had that impression too.

THE COURT: Well, I thought it was one of the background purposes in it, although home autonomy was the main, overriding purpose too. We've had some of both of it going on. Maybe I was mixed up. Go ahead. Your study, Mr. Tennant, was mostly for autonomy, that is, to [576] bring local home rule to the county?

A. That's true, Judge, My study indicated it would possibly be better since the voters had previously rejected the consolidation of city and county government to establish a charter allowing a charter for the county government and allowing the city government to remain.

Q. I show you a document marked plaintiffs' exhibit 98. As you identify that, if the Court permits, I can shorten this by asking him some leading questions. A. Yes, this is the report prepared by, a majority report prepared by the five-member committee appointed originally by the Board of County Commissioners.

Q. Could you tell us who was on the committee, please? A. Mr. Adrian Blanton; Mr. Ashton Brosnaham, Jr.; Mrs. Jacqueline Simmons; Mr. Frank Westmark; and myself.

Q. Okay, sir, could you just briefly tell us who each of those people is.? A. Mr. Blanton works for Gulf Power. Mr. Brosnaham is a retired postmaster for the county. Mrs. Simmons is a school teacher.

Q. And she's black, isn't she? A. Yes, she is. And Mr. Westmark is with St. Regis Paper Company, and of course I'm with the Health Department.

[577] Q. In that proposal by the committee that was, I take it, submitted eventually to the county commission, is that correct? A. That is correct.

Q. Would you show the Court in that document what you propose with regard to apportioning the Escambia County Commission.? A. This proposal was presented to the Board of County Commissioners to expand the existing county commission from five people to seven people, with five persons being elected within districts and two people being elected at-large.

Q. Does the proposal contain an apology or rationale for this particular apportionment starting on page 24? A. Yes, it does.

Q. Without reading all of that, since it is in the record, could you just briefly tell us what the committee's rationale for that apportionment was? A. Well, the committee's rationale was simply that it was a case of economics, that it was costing, the committee, I believe, evaluated the cost of running for a Board of County Commissioner's seat for approximately twenty thousand dollars, and in order to cut down the cost of running and in order to provide a more meaningful representation [578] and closer identification and scrutiny of the commissioners, that the rationale was to elect the commissioners from districts and at large so as to give a balanced representation.

Q. In the committee discussions was the opportunity for minorities to elect candidates discussed with respect to the district elections? A. There was some general discussions along those lines and of course the committee was looking at the case in Mobile, but I believe the overriding thought as far as the committee was concerned was to be able to lessen the cost of running for public office and also to make it a little more, well, to improve the possibility of people having to secure large sums of money from various people in order to run.

Q. All right, sir. Although not — excuse me, Your Honor. On page 25 of the proposal when it says the charter government study committee felt that the commission should be enlarged to insure that the plan of representation would be equitable, representative and responsive, did that include the idea that even minority groups would have better representation? A. You could infer that, I believe, but as I said, the overriding consideration was economics.

Q. I understand, sir. Now, Mr. Tennant, would [579] you identify the next document, which is marked as plaintiffs' exhibit 99? A. Yes. This is the minority report. Bear in mind that this document, the original document that went to the Board of County Commissioners, was a majority report. Three members of the committee were for it and two were against it. And this document is the answer of the minority report to the Board of County Commissioners.

THE COURT: Did it also go to the board for its consideration?

A. Yes, sir.

THE COURT: Both reports?

A. Yes, it did.

Q. Both reports went to the Escambia County Commission? A. Yes, it did.

Q. All right, for the record, the minority report also proposes single-member districts, does it not, at the top of the second page? A. Yes, it says, "Election of county commissioners: A total of five, shall be by districts and on a nonpartisan basis."

Q. All right, sir, so in effect the minority was actually recommending dropping the two at-large votes and just having district elections?

[580] A. This is right, based upon the economics.

Q. The cost? A. The cost.

Q. Okay, now, what happened when the majority and minority reports of the first committee were submitted to the Escambia County Commission? A. A review was made by the board and an additional committee was ap-

pointed consisting of myself and Mr. Brosnaham, since I was on the majority side and Mr. Brosnaham was on the minority side. Another committee was formed by the commission to review the differences between the majority and the minority report and come back with another document.

Q. All right, sir, who else was on the committee besides you and Mr. Brosnaham, the second study committee, we'll call it? A. There was myself, Mr. Brosnaham. I can't, I don't remember, you know, the total membership.

Q. Was Commissioner Deese, County Commissioner Deese, on it? A. I believe Mr. Deese was on it.

Q. Was Mr. Lott on the second committee? A. I really don't know who all was on that second committee.

Q. All right. [581] A. But the record is at the court house and I'm sure you can establish that. But I believe that Mr. Deese was a member of the committee.

Q. Okay. A. I think Mr. Lott served the committee as the county attorney.

Q. Was a Ms. Pat Jones from the League of Women Voters on that second committee? A. Yes, I think she was.

Q. All right, sir, do you recall whether there were any black members of that second committee? A. I don't believe there was.

Q. Okay, now, I show you a document marked for identification as plaintiffs' 100, and could you tell the Court what that is? A. Yes. This is the document that was developed by the second committee.

Q. Was that document also presented to the county

commission as the recommendation of the second study committee? A. Yes, it was.

Q. Does that document call for district elections of county commissioners? A. I believe that it does, sir.

Q. Could you find that and maybe I can help you, [582] because it's tough to. Yes, it's section 201? A. Section 201 reads: "The legislative power of the county shall be vested in the Escambia County Commission, hereafter referred to as the Commission. There shall be five Commission districts and one commissioner member shall be elected from each district by voters of that district." And it limits the terms of the commissioners to three consecutive terms.

Q. Okay, sir, was there any minority report to that recommendation? A. No, there was not.

Q. Were all of the members of the committee in agreement with the proposal that was submitted? A. To my knowledge, yes.

Q. Do you recall Commissioner Deese being opposed to that report? A. No, I don't.

Q. What happened when this second charter proposal was submitted to the county commission? A. It was submitted to the commission for their edification, and bear in mind that both committees were a committee appointed by the Board of County Commissioners and any document prepared by the committee would have to go to the Board of County Commissioners for final ratification or for whatever usage they would prefer to [583] put it to.

Q. All right, sir, and what usage, with respect to the reapportionment part of the charter proposal what did the county commission do? A. The commissioners felt like the at-large representation was a more reasonable and fair approach to electing the Board of County Commissioners and therefore they changed that part of the document.

Q. Changed the district elections to at-large elections? A. That's right.

Q. All right, sir. A. I might also point out too that there was discussion in the second committee on the at-large election and there was opposition to the district elections within the framework of that committee but a majority vote voted that there should be district elections and that's the way it came out.

THE COURT: You say there was some opposition to which part of it?

A. The second committee.

THE COURT: There was some opposition in going to districts rather than at-large?

A. Yes, there was.

Q. Let me show you a document that's already in [584] evidence, and it's plaintiffs exhibit 72, and would you just identify that document.

A. This is the final charter that was put before the electors for ratification or rejection.

THE COURT: What exhibit? What number is that?

MR. BLACKSHER: It's 72, Your Honor, and it's already in evidence and it is in fact a copy of the charter that was published in the local newspaper and submitted to the voters.

A. This is true.

Q. What was the date? Is there a date on there? A. For referendum on November 8, 1977.

Q. Okay, sir, was there a unanimous vote of the county commission to change the district elections to at-large elections, do you know? A. I don't know. I wasn't present at the time that the commissioners took a final vote, but I would assume that that would be so.

Q. Okay, so the referendum considered a charter proposal that included not district elections but at-large elections? A. This is true.

Q. And was the charter proposal or referendum defeated? A. Yes, it was.

[585] Q. All right. Mr. Tennant, are you presently serving on another commission to study charter government for Escambia County? A. Yes, I am.

Q. Just tell us briefly what that commission is and how it was formed. A. This is a charter commission that has been appointed by the legislative delegation to write a proposed charter to be submitted to the voters for ratification or rejection.

Q. Was it appointed by the legislative delegation? A. Yes, it was.

Q. And will there, from this commission, result another referendum on charter government? A. Yes, there will.

Q. When will that referendum most probably be? A. I have no idea at this time but it's my understanding it will be sometime in 1979, before July the 1st, I believe. The commission has to finish its document and the referendum has to be held during the year 1979.

Q. Will this charter commission be considering reapportionment among other things in respect to the charter government? [586] A. I'm sure that it will.

Q. Is there any way to predict what the commission as a whole ultimately will propose with respect to districting? A. I have no way of predicting that.

MR. BLACKSHER: All right. Your Honor, we offer in evidence plaintiffs' exhibits 98, 99 and 100.

THE COURT: They come in without objection?

MR. LOTT: Your Honor, the only objection that we would have is to the relevancy of this whole line of questioning on the ground that the county commissioners are defending this law suit and obviously feel that general elections, at-large elections, are more beneficial to the public than single-member districts, and that's the most the evidence could prove.

THE COURT: Well, all these things may or may not give us a picture at the end of it, Mr. Lott. I'm going to overrule your objection, if that's the objection to it.

MR. BLACKSHER: We have no further questions of Mr. Tennant.

CROSS EXAMINATION

Q. Mr. Tennant, I believe you mentioned on direct examination that the feeling of the charter [587] commission or charter committee that was studying charter government at the request of the county commissioners was basically that the cost of election was too great in the at-large system. Is that basically correct? A. This is basically correct.

Q. How much of a role did racial consideration or the ability to carve up the county into small districts in order to enable minorities to have a better chance of representation play? A. I think as far as the racial implications in making that decision was minimal. I don't believe that there was any consideration given that would override in any way the economic consideration that the committee was reviewing because our study indicated the cost of running for office was getting to be quite a sum of money and therefore the person running for an at-large office, because of that sum of money, would have to raise considerable money from some source.

Q. In connection with the determination, you mentioned in your direct examination that you considered something of the effect of the Mobile litigation, is that correct? A. That's right.

Q. Isn't it true, Mr. Tennant, that the only consideration that was really given in this regard was [588] the fact that the committee felt that if federal law were to require that single-member districts be adopted that the committee would rather adopt it itself rather than have the federal courts adopt it for the committee? A. That's true. That's true. The thought was that the people should have an opportunity to express their opinion in this area rather than have the federal courts adjudicate that this is the position that elected people ought to be elected, the method by which people ought to be elected.

Q. All right, now, Mr. Tennant, what was the philosophy behind the charter government as proposed by your charter committee as far as the function of the Board of County Commissioners? A. The charter would strengthen the authority of the Board of County Comcommissioners to handle problems that are basically of a local nature.

Q. Let me clarify my question. What I'm trying to figure out, get out here, is whether or not the county commissioners under the charter form that you proposed would have the same kind of administrative responsibilities as they presently do or whether they'd be limited to more of a policy-making body. A. Well, under the charter proposed by both committees the commission would be more of a policy-setting [589] board and would not act as an administrative and policy board but strictly more or less as a legislative policy-making board rather than strictly an administrative policy-making board.

Q. So the function of an individual county commissioner would have been modified somewhat from the present commission in that the county commissioner would not be concerned with the day-to-day affairs of the county but would rather be concerned basically with policy-making, is that correct? A. That's correct.

Q. So therefore an individual county commissioner's activities would be somewhat less than they would be under the present system, is that correct? A. That would be true as far as administrative functions, but so increase their legislative powers.

Q. I see. But their day-to-day activities in performing their job would be decreased under the proposed charter? A. That's true, yes.

Q. Okay, and in that instance would you expect as a result of the charter that the county commissioners would have the same kind of salaries that they would have had as if they continued under their present system, or do you have any opinion on that? [590] A. Well, neither one of the committees recommended establishing any salaries within the framework of the charter. They recommended or did write into the charter that the general legislation which establishes the salaries of all boards of county commissioners over the state would be the prevailing wage rates for the elected county commissioners.

Q. Okay, but my point is that under the proposed form of county government that you were proposing in your charter committee the individual county commissioners would be doing in effect less work and therefore the kind of job they had was somewhat diminished and the fact that they would have to go to considerable expense in an election county-wide would make a considerable difference in the fact they weren't going to have that much

authority and power when they completed and got there. A. Yes, sir, that was certainly taken into consideration.

Q. Okay, Mr. Tennant, you're fairly familiar with the concept of charter government in escambia county as indicated by your testimony that you have served on three committees and are presently serving on a committee appointed by the Legislature for charter government. Would you say that it's a fair statement that there's substantial difference of opinion in Escambia County as to [591] whether at-large or single-member districts are preferable?

A. Yes, I would say that would be a fair statement, Mr. Lott, that there are considerable differences of opinion among the people on that particular point. In fact there was differences of opinion on the second committee on that point.

Q. And the purpose of the charter proposal was to have an opportunity for a decision to be made and that decision was made by the county commissioners in favor of at-large elections when it was presented to them, is that correct? A. That's correct, and it was certainly within the commissioners' prerogative and authority to do this because, as you know, both committees were appointed by the Board of County Commissioners to develop information for the Board of County Commissioners and to develop a proposed charter for their review and analysis prior to any referendum. That was true, yes, sir. That's true.

MR. LOTT: No further questions.

THE COURT: You say there are substantial differences in opinion. What are the reasons, as you know them, at least, for the differences in opinion? From your committee I understand your chief reason was economic.

[592] A. Yes, sir.

THE COURT: The cost of running. Were there other reasons that you know of?

A. Well, some of the reasons was, as I stated here, was that if there were to be district elections that it's better for the people to determine the method district elections rather than the method being formulated or put into effect by the federal courts. That was one of them. The other is that the people that felt like that at-large voting was more representative because of the fact that there was no dilution of anybody's vote from the standpoint of running at-large, every person's vote was substantially equal according to the information that came from various members of the committees. And I believe at one time that that was brought out in the original committee, Your Honor.

THE COURT: Yes, sir.

A. But the overriding basis by which both committees operated was one of economics.

THE COURT: Yes, sir, I understood that.

A. That it's much cheaper to run an election within a district than it is to run an election countywide.

THE COURT: Mr. Blacksher, I should have waited till you finished. I'll let you go ahead.

REDIRECT EXAMINATION

[593] Q. One question.

THE COURT: Yes, sir. Go right ahead.

Q. If the idea of the committee or the intent of the committee was to give the people of Escambia County the chance to express their own opinion about district elections rather than have a court decide for them, is it fair to

say that the county commissioners excised that provision and did not give the people of Escambia County the opportunity to make that choice?

MR. LOTT: Objection, Your Honor. That question is plainly argumentative.

THE COURT: That objection is sustained.

MR. BLACKSHER: That's all we have.

THE COURT: Mr. Tennant is excused from further attendance, is he not?

MR.BLACKSHER: Yes, he is.

THE COURT: Mr. Tennant you're excused from further attendance. your next witness, Mr. Blacksher.

* * * * *

No. 82-1295

Office - Supreme Court, U.S.
FILED
AUG 8 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX
VOL. II – Pages 325-602

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Probable Jurisdiction Noted April 18, 1983

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Memorandum Decision and Order of the United States District Court for the Northern District of Florida in *McMillan* v. *Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla. Dec. 3, 1979) B-54a

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TESTIMONY OF JULIAN J. BANFELL

[594] JULIAN J. BANFELL, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLACKSHER:

Q. May it please the Court, this is Mr. Julian J. Banfell. He resides at 705 South "I" Street in Pensacola. He's fifty years old, born and raised in Pensacola. His present employment is that of a plumbing contractor. Is that correct, Mr. Banfell? A. That's true.

Q. Mr. Banfell, were you a member of the Escambia County, strike that, the Pensacola City Council during the period 1955 to '61? A. I was.

Q. Do you remember the election between Charlie Taite and Admiral Mason in 1955? [595] A. I remember the election, yes, sir.

Q. Would you describe to the Court what the reaction of the council members was to the Taite-Mason election.

MR. CATON: Your Honor, I would object to that. The best evidence of that would be the council minutes where it was discussed. He can ask him what his reaction was to it.

THE COURT: I don't see how you can get to this. If you show me some way to let you go this far, but you're asking him something about reactions and it's way out.

MR. BLACKSHER: Judge, I submit this is the kind of testimony that Rule 701 of the Rules of Evidence concerning lay testimony was intended to cover where it says that the witness is not testifying as an expert, his opinions or inferences are limited to those opinions and inferences which are (a) rationally based on the perception of the witness and, (b) helpful to a clear understanding of his testimony

or the determination of a fact in issue. To allow this witness, who was a participant, simply to describe his perceptions of what was going on –

THE COURT: He can certainly give us his own reaction and I didn't say he couldn't do that, but you're trying now to get him to give us, describe the [596] reactions of other to it when they may or may not have had reactions, or as a minimum he has to judge their reactions by something that he saw or heard. I just don't understand how you can carry it this far.

MR. BLACKSHER: Let me try it this way, please.

THE COURT: What was that, Rule 701 you were trying to bring it under?

MR. BLACKSHER: Yes, sir.

THE COURT: You can take him on his own reactions, what he went into. I realize we go pretty far in a case of this kind, sir, but I don't – have you got any case citing, have you got any case to show me in which this kind of testimony went in?

MR. BLACKSHER: I have not researched the case law under this new rule, no, Your Honor. I would have to provide that after we're given the opportunity to do that.

MR. LOTT: Your Honor, may I respond?

THE COURT: How's that?

MR. LOTT: The note to the rule indicates that the limitations of (a) and (b) is the first one is the first hand knowledge requirement and the second one discusses the problem when the witness is not able to express himself in language other than what his opinion is. The kind of opinion testimony that this kind of rule is contemplating here is something like were they [597] surprised or something like that.

THE COURT: I have that feeling too but I'm going to sustain the objection at the present time and if during the recess you can ask your witness to stay and come back, if during the recess you can give me further basis I'll consider it again, but that's my understanding of Rule 701 too, what Mr. Lott said about it.

Q. Let me try this question, may it please the Court. Mr. Banfell, was there shock on the council as a result of the Taite-Mason election?

MR. CATON: Your Honor, I'll object to that question as being leading.

THE COURT: The objection will be overruled at this point. We've got him so confined in asking questions, objection will be overruled.

Q. That means you may answer.

A. It was surprise and amazement that Mr. Taite had come very close to defeating Admiral Mason, yes, sir.

Q. Were you privy to conversations by council members and remarks by council members off the record concerning the nature of their surprise? What remarks were made concerning the election?

MR. CATON: Your Honor –

[598] THE COURT: Objection sustained.

A. Well, we –

THE COURT: the objection was sustained.

Q. You can't answer the question, Mr. Banfell. Mr. Banfell, was the surprise expressed by the council regarding this particular election related to the fact that Mr. Taite is a black person?

MR. CATON: Your Honor, now we're getting into the gist of it. He's testified that there was a reaction. Now he's asking him to testify as to what councilmen felt of thought, and that's hearsay.

THE COURT: I'm going to let him go this one step further. I'm going to let him answer that question.

Q. You may answer that question.

A. Would you rephrase the question, please? I didn't understand you.

Q. I'm saying, I'm asking you if the fact that Mr. Taite was black had to do with the surprise or shock that the council members expressed.

A. Oh, yes, surely.

Q. What did it have to do with it?

MR. CATON: I'll object that I think we're going too far there.

THE COURT: Objection sustained. I'm trying to stay with you as far as I can, Mr. Blacksher. You can ask [599] this man about his own reactions to it, and he can testify. He was a member of that council, wasn't he?

Q. All right, Mr. Banfell, what were your reactions to the Taite-Mason election?

A. This, I was elected at the same time, and –

THE COURT: You mean at the same time in this race?

A. Yes, 1955, and I didn't take office till June, which wa a month or so away. My reaction was surprise and amazement. I had just gotten into politics. I was only twenty-seven years old at the time and I just didn't know what to make of it.

Q. Why were you surprised? A. Well, prior to that to my knowledge there had never been a black on the city council.

Q. Mr. Banfell, in 1956 did the council reapportion or redraw the boundary for Ward Two in which the Taite-Mason race had occurred? A. Under the charter as I remember it, we're going back a long ways, but under the charter as I remember it before each council election there had to be reapportionment as the population grew and shifted. And, yes, there was changes in boundaries and zones.

Q. Was there any effort in that 1956 apportionment to add white voters onto Ward Two?

[600] MR. CATON: Your Honor, I'll object to that as being leading and assuming a point in issue.

THE COURT: I'm going to let him answer. Objection overruled.

Q. You may answer that, Mr. Banfell.

A. Yes, I think that they didn't want a recurrence —

MR. CATON: Your Honor, I'll object to this testimony as not being responsive to the question and citing hearsay as to what they wanted.

MR. BLACKSHER: Your Honor, this gentleman was a member of the council

THE COURT: He was indeed a member of the council. He did go beyond the question but I'm going to let him answer.

Q. Go ahead, Mr. Banfell. You may answer. A. With the interruption, would you please ask me the question again.

Q. Yes, sir. My question was whether or not there was a conscious effort to increase the number of white voters in Ward Two by the redrawing of the boundaries in '56. A. Would Ward Two be Admiral Mason's ward?

Q. That's the one. A. Yes. There was a shifting of population and [601] redrawing of the boundaries which was, happened, as I said, before every election, and the boundaries were shifted.

THE COURT: Well, that's not exactly what he's trying to ask you, I think. You had the duty to reapportion each time to make the population equal?

A. Yes, sir.

THE COURT: As nearly as possible.

A. Yes, sir.

THE COURT: Now, was there any other consideration that entered into the addition of these two white, these two precincts, whatever they were, to Ward Two, other than that consideration? In other words was it motivated by racial considerations, if I need to ask it that way?

A. Well, they didn't want a recurrence of what had happened in 1955.

Q. What do you mean? What had happened? A. Mr. Taite narrowly, coming very close to defeating Admiral Mason.

MR. CATON: Your Honor, I would move that that testimony be stricken as to again hearsay, what they wanted; number two, motives behind what they, whoever "they" is, wanted.

THE COURT: With deference to you, sir, I'm again going to overrule it. This gets into the heart of the area [602] I can appreciate your concern in this matter but we are

trying to get to the truth of this matter too and I was thinking you might even want to welcome such testimony as this to give you an opportunity to answer it. Your objection in any event is overruled and the motion is denied.

MR. CATON: Yes, sir, I understand we're trying to get to the truth. I just want it to come from the horse's mouth.

THE COURT: Well, it has come from something pretty close to it. He's a member of that commission, and you can bring others on to testify to the contrary, if that's what you're talking about. Let's go ahead with this. The objection is overruled.

Q. Mr. Banfell, I would like now to direct your attention to the events in 1959 leading up to passage of a special act in the Legislature that changed the five district elections in the city council to at-large elections. Do you recall the city, being part of the meetings between the city council members and the legislative delegation to discuss this? A. Yes, sir, we met with the legislative delegation.

Q. All right, sir, could you tell us what some of the reasons given by the council members to the [603] legislative delegation were for asking for that change?

MR. CATON: Your Honor, I don't know if it's necessary that I continue to object on this, asking for reasons that other council members gave, which is hearsay, and motivation also.

THE COURT: All right, sir, it would be hearsay but if he heard them giving the reasons to somebody else it wouldn't be quite that kind of hearsay. I'll overrule the objection.

Q. You may answer. A. The reasons for the Legislature –

Q. Changing the districts. A. Changing the law to at-large?

Q. Yes, sir. A. Well, it was felt that if everybody ran at-large then it wouldn't be this hassle for reapportionment so bad every time there was a council race coming up. And we, it made it, the council members running at-large, then it would make no difference other than population being equally divided within the five wards.

Q. Specifically, Mr. Banfell, was the legislative delegation told that one of that reasons for the apportionment would have been to prevent the opportunity of blacks from being elected to one of these districts seats, to one of these districts seats? [604] A. That I don't specifically recall. Here again we're gog back a long time, Your Honor.

THE COURT: I understand, sir. If you can't recall, just say so.

A. I can't recall.

THE COURT: If you can say so, say that.

A. But I believe that that was probably the –

MR. CATON: Your Honor, I'll object as to probably. If he can't recall, I think that's the extent of his answer.

THE COURT: If you can't recall, sir, either you recall something about it or you don't, sir.

A. Yes, I'd have to say that that was, that was the reason for changing this around where we would have everybody run at-large.

THE COURT: You mean the black feature of it was the reason for changing it around? You previously testified they didn't want to have these elections, this reapportionment, every two years.

A. Well, by charter we still had to have reapportionment regardless.

THE COURT: Well, your answer –

A. But you had to have, you had to have the, everybody run at-large.

THE COURT: That was what you were changing to?

[605] A. That's right.

THE COURT: And the reason for that change was what?

A. Was because then we wouldn't have this hassle of reapportioning to keep so many blacks in this ward and so many whites in that ward and keep the population in balance as to race.

THE COURT: All right, sir. Go ahead, Mr. Blacksher.

MR. BLACKSHER: That's all we have of this witness, Your Honor.

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TESTIMONY OF ORELLIA BENJAMIN MARSHALL

[609] ORELLIA BENJAMIN MARSHALL, called as a witness by the plaintiffs, being first duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE

[610] May it please the Court, this is Mrs. Orellia Benjamin Marshall, 1803 East Scott. She's forty years old. She's married, with one child. She's been a lifelong resident of the Pensacola-Escambia County are. She graduated from Washington High School, Washington Junior College, Florida A & M. She is presently employed with the Escambia County School Board, where she teaches a sixth grade science class. She is a member of the Sixth Avenue Baptist Church, League of Women Voters and Democratic Party. In 1973 she was a candidate for the city council and at that time her name was Orellia Benjamin. Is that correct, Mrs. Marshall?

A. Yes.

THE COURT: The last name I didn't catch.

Q. Benjamin. Is that correct?

A. Yes, that's correct.

Q. Thank you. Mrs. Marshall, why did you decide to run for office in 1973 for the city council?

A. Because at that time I strongly felt, as I do now, we need black representation on the city council and also representation of a woman.

Q. Who was your opponent in that election?

A. Mr. Porky Paulk was my opponent.

Q. Why did you choose to run for that office as [611] opposed to perhaps the county commission or the school board?

A. Well, I did not have the revenues available for qualification for county commissioner and the revenues were more available for this position.

Q. And the school board?

A. The school board, I'm employed by the school board and I cannot run for a seat on the school board because I cannot be my own boss.

MR. RAY: I cannot hear the witness.

Q. Would you sit up in the chair.

THE COURT: See if you can speak a little louder for us, please. If you keep on having problem, move on over, Mr. Ray.

MR. RAY: Thank you. She said school board and it caught my attention. What was it?

A. I cannot run for a seat on the school board because I'm employed by the school board as a teacher.

MR. RAY: Thank you.

Q. Thank you. Mrs. Marshall, how did you assess your chance of winning this election when you announced your candidacy? A. At the time I decided to run I thought and I strongly felt that Pensacola was ready to accept a black skin in the political arena, and a woman, but as the [612] campaign ran on and it ended I realized I only had a dream, there was no chance of my being elected on the city council by the citizens of Pensacola.

Q. Is that assessment still true today? A. I strongly feel that today that if I run today I would not win with the system the way it is.

Q. Mrs. Marshall, did you campaign in both black and white communities. A. I did.

Q. And how did you go about that? A. Well, I took my campaign base to my church because the black churches are the heaviest, is the best way for us to go, and the only way we have to go in politics. These are the people that financed me. I did have whites working with me but they're what you call the liberal type whites in the South, you know, these type whites, and we campaigned every way possible we could but we had limited revenues and limited time because at the time I still had to stay on my job and campaign in the afternoons.

Q. Do you think you would run again under the present system? A. No, I would not.

Q. Both Mr. Hollice Williams and Dr. Donald Spence have at times in the past won election to the city [613] council. How do you account for this? A. They were appointed before they won any election. I call those men chosen men.

Q. Do you think that they are, they were able to be effective, vigorous spokesmen for the black community? A. Dr. Donald Spence, yes. Mr. Williams, I don't think he's a very influential man. I don't think he has really, I don't think he has the ability to be a spokesman, and the experience.

Q. Why do you differentiate with Dr. Spence? A. One reason, because of Dr. Spence's professional background in comparison to Mr. Williams. Mr. Williams doesn't have that professional background that Dr. Spence has, and that has a lot to do with it.

Q. During the course of your campaign did you find various issues raised in the black community that were of

concern to the citizens? A. The biggest concern during my campaign to the citizens was that the senior citizens and the young kids, recreational areas and things of this nature, and the governmental complex was hot at that time, revitalizing Pensacola. Those were the main issues we were taking at that time.

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TESTIMONY OF F.L. HENDERSON

[624] F.L. HENDERSON, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

May it please the Court, this is Mr. F.L. Henderson. He lives at 2608 North Seventh Avenue in Pensacola. He is forty-three years old. He's been a lifelong resident of Pensacola and the Escambia County area. He's presently employed at Eglin Air Force Base as [625] a water treatment analyst. He's married, with six children, graduated from Washington High School, attended Pensacola Junior College. He is past president of the local chapter of the Southern Christian Leadership Conference, served for ten years on the executive council of the NAACP, been active with the Young Democrats, member and president of the Jehovah Lutheran Church, and an officer in the Toastmasters International. In 1971 he was a candidate for the city council. Is that a correct statement, Mr. Henderson? A. Yes, sir, it is.

Q. Thank you, sir. Mr. Henderson, why did you decide to run for the city council in 1971? A. There were a number of reasons I decided to run. There were a number of issues at that time that we thought that the black community should address itself to and this was one of the reasons I ran. I felt that some of the items that were discussed during that particular period of time could only be addressed through someone from that particular group.

Q. Why did you choose to run for the city council as opposed to any other office such as county commission or school board? A. Well, at that time I was primarily concerned about the things that were happening within the [626] city, the flight of the white people from the city,

the decay in the downtown area, the problem with the housing area and other items at that particular time.

Q. Who was your opponent in that race, Mr. Henderson? A. Mr. John Frenkel, Jr. at that time.

Q. Okay, sir. When you announced your candidacy, did you think you had much chance of success? A. Not a great deal of chance of success but I thought that the issues had to be addressed at that time and I was hoping that maybe there was a possibility that I could arouse the conscience of the total community on the things that we were discussing as issues at that particular time.

Q. I see, sir. In organizing your campaign and soliciting funds what sources of funds did you receive from the black community? Who did you approach for financial help from the black community? A. Well, I approached the usual places. I approached the black business people, the churches, et cetera, also attempted to approach the white community as it relates to business and people that had participated in the election process in the past on helping candidates who they felt that had something to offer the city or as relates to being a sportsman.

[627] Did you have much success raising funds in the white community? A. Yes, I did. No, I didn't have any success raising any money. In fact my total revenue from the white community was zero.

Q. Did you have some success in the black community? A. I raised approximately seven hundred dollars.

Q. Do you consider that race was a major factor in your defeat? A. It was the primary factor in my defeat because as a result of the race a number of items came out that, how did I feel I was qualified to run for city council,

did I feel that I could represent white people in city government, et cetera.

Q. Do you feel that you were able to represent white people in city government, had you been elected? A. I wasn't concerned about representing any race or people. I was concerned about the issues in the city at that time. My primary concern was trying to upgrade the quality in the City of Pensacola. I felt that the expertise that I had gained through working in various organizations and being addressed to the problems of the city at that time in itself qualified me as a candidate.

Q. Okay sir. Would you seek election again [628] under the present system? A. No, I will not. There is no possible way I feel I could win under the present system. That's the reason I haven't run again.

Q. Do you think that's true for other black candidates? A. Very true. I think when you look at the total composition of the voting, of the people that vote, we only can look for about 20 percent of the total electors and with 20 percent we cannot win an election.

Q. Both Mr. Hollice Williams and Dr. Spence have at times won election to the city council. How do you account for that? A. Well, we must recognize that both of these gentlemen were appointed to this position and this is again an example of the power system, to select for the black community their leaders, the people that they want to represent them. These people were not originally elected by the constituents of this county or this city.

Q. During the time as an officer of the SCLC and the NAACP were those organizations active in putting forward various community issues to the city, county and school board? A. Yes, very much so.

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TESTIMONY OF ELMER JENKINS

[722] DIRECT EXAMINATION

BY MR. MENEFEE:

Q. Would you please state your name and address, please, sir.? A. My name is Elmer Jenkins. I live at 1003 East Hayes Street, Pensacola, Florida.

Q. Okay, sir, when did you come to the Pensacola area, Mr. Jenkins? A. I came to Pensacola in 1959.

Q. Okay, sir, what's your educational background, please, sir? A. I received a BS with high honors from Florida A & M, Master's with honors at the University of Illinois, and I did my Ph.D. work at Florida State University.

Q. Have you yet received your Ph.D.? A. But I have yet to finish one controversial part of my dissertation and I should get it in June.

Q. Okay, sir, what is your present employment? A. I'm an associate professor of biology at Pensacola Junior College.

Q. Okay, sir. Mr. Jenkins, have you been active in any civic or religious organizations or black groups in Pensacola? A. Yes. I'm a trustee of Allen Chapel A.M.E., [723] African Methodist Episcopal Church.

THE COURT: Mr. Jenkins, perhaps if you will sit up, we do have a little acoustics problem. I know they fuss at me when I lean back.

A. Thank you. I've been on the board of directors of the March of Dimes. I've worked with the Boys Scouts through my church. I have worked in voter registration drives. I have worked in various political campaigns of people other than myself.

Q. Okay, sir. Mr. Jenkins, you have been a candidate for public office. Would you please tell us when and for what office you have run. A. In 1968 I ran for county commission in District Five. In 1974 I ran for a school board position in District Three, and for the same position again in 1976.

Q. Okay, sir. Do you remember your opponent in the 1968 county commission race? A. In 1968 I had three opponents: Mr. Armour, Mr. Gindl, and Mr. Watley.

Q. What was the outcome of the election, please, sir? A. I finished second in the primary, receiving about fourteen thousand votes, and I was in the runoff with Mr. Sam Armour.

[724] Q. And did you lose the runoff? A. Yes, I lost the runoff.

Q. Would you please tell us who your opponents were in the 1974 school board race.? A. In 1974 I had one opponent, Mr. Sanders.

Q. What was the outcome of that? A. I won that. I won that election by about eighteen hundred votes.

Q. Okay, sir. This was for the Democratic nomination? A. Yes.

THE COURT: You're talking about –

A. Yes, sir.

THE COURT: You're talking about now you won a primary eiection?

A. Yes, sir, 1974, sir.

THE COURT: That was the primary?

A. That was the primary, yes.

Q. And then in the general election who was your opponent and what was the result? A. In the general election my opponent was Mr. Richard Leeper, and I lost.

Q. Okay, sir. Mr. Leeper was the Republican? A. Yes, sir, he was.

Q. Okay, sir. Would you please tell us who [725] your opponent was in 1976.? A. In 1976 in an election that was set up, an election in Escambia County to add two districts to the school board, number six and seven, my opponents were Mr. Bailey, Mr. Forester, Mr. King, Mr. Lee, Mr. McGill and Mr. Southard.

Q. Okay, sir, what were the results of the election? A. In the primary I finished first by twenty-five hundred votes and I was in the runoff. I was in the runoff with Mr. Jim Bailey.

Q. Mr. Bailey? A. Bailey, yes.

Q. Okay, what happened in the runoff? A. I lost in the runoff.

Q. Do you remember the vote margin approximately? A. Yes. Mr. Bailey received about twenty-six thousand and I received around twenty-one thousand.

Q. Okay, sir. Thank you. Mr. Jenkins, why have you run for office? A. Well, back in 1966 when I first ran for office I waited until nearly the closing days of the qualifying period and at that time no other blacks had qualified for that particular election and I thought that blacks should become involved and participate and about [726] two days before the period ended there still were no blacks so I qualified so at least there would be one black in the political arena in 1968.

Q. Okay, sir. Did you have similar reasons for the 1974 and '76 races or are they different? A. Well, similar reasons. Again not too many blacks were participating. In 1974 in running for a school board position I thought that my chances for success might be enhanced since I was a college professor.

Q. I see, sir. Let me make sure I understand you. How did the college professor, this is your background in education? Is that why you – A. Yes, I thought my chances for a school board position might be better than my chances were for a county commissioner position since I was a qualified, competent educator.

Q. I see, sir. Mr. Jenkins, with this experience behind you how would you assess your chance of winning at-large election in Escambia County? A. Well, if I had to run again in a countywide election I wouldn't run because my chances would be about slim to none.

Q. Do you consider that your race was a major factor in your defeat? [727] A. Yes, I do.

Q. Any particular reasons? A. Well, in 1968 when I ran for a county commissioner's position they had six rallies and four of those rallies were held in territory that I thought was hostile to me. They had one at Escambia High School, they had one at Century, they had one at Bratt and one in the Cantonment area.

THE COURT: Now, that was the Democratic Primary, wasn't it, Mr. Jenkins? You're talking about those rallies, the Democratic Primary rallies?

A. Yes, sir, that was the Democratic Primary.

THE COURT: The Democratic Party?

A. Yes, sir.

THE COURT: So what you mean is you're disagreeing with the Democratic Party, yet from what the testimony is I've heard blacks are pretty well represented in that party and its local committee.

A. What I'm saying, Your Honor, is this. They had six rallies and they did not schedule one rally in a predominantly black area.

THE COURT: My point with you, sir, is that from what I've heard there's some pretty good black representation on that local Democratic Committee.

A. Yes, I don't want to differ with that, sir, [728] but I'm saying if there are seven rallies, if there are seven rallies I think at least two of the rallies should be in areas where I have somebody with similar pigmentation that I have. But if you're familiar with Bratt, Florida, I think that the rally in Bratt, Florida, served to my detriment.

THE COURT: By the same token, sir, if what you needed to be getting exposure in is the areas where you weren't strong, that's where you needed to be selling yourself to the people. What's wrong with that? A. Well, my thinking, Your Honor, is this. I don't think, I don't think I sold myself too well in Bratt because of the makeup of the Bratt area. I think I did, I think more harm came to me from the Bratt area than benefits.

THE COURT: All right, go ahead, Mr. Menefee.

Q. Mr. Jenkins, the Judge raised a question about the activity of the Democratic Party. Do you know whether or not the Democratic, local Democratic Party leadership in 1968 had a great deal of participation or what participation it had by blacks in its leadership at that time?

A. In 1968 as I recall there was one black on the Democratic Executive Committee out of a total membership of about fourteen.

[729] Q. I see, sir. And you heard the testimony this morning, did you not, concerning increased black participation in the Democratic – A. No, I was not here this morning, sir.

Q. I'm sorry.

THE COURT: I hope he wasn't. He's not a party plaintiff.

MR. MENEFEE: Yes, he is. This is Mr. Elmer Jenkins.

THE COURT: All right, go ahead.

A. I wasn't here this morning.

Q. Mr. Jenkins, would you please tell us what sources of funds you had available to conduct these various elections in the black community first. A. In 1968 I was able to raise approximately thirteen hundred dollars.

Q. Okay, sir, did that change? What about '74 and '76? A. In 1974 I raised, I was able to raise approximately two thousand dollars.

Q. I see, sir. A. And about sixteen hundred in 1976.

Q. Okay, sir. Now, was this raised in the black community or the white community? Could you please tell us? [730] A. Basically in the black communities.

Q. Okay, sir. Who did you, what types of individuals or organizations would you approach in the black communities? A. Churches, fraternities, social clubs.

Q. And in the white community? A. I talked to any individuals that I knew, and some organizations.

Q. I see, sir. Did you contact any coworkers at Pensacola Junior College? A. Yes, I contacted some coworkers at Pensacola Junior College and some of them contributed to my campaign.

Q. Okay, sir. have you ever received the endorsement of the Escambia Educational Association? A. Well, in 1974 they had an organization which endorsed certain candidates and they interviewed those in my areas and they narrowed it down to two and that was Mr. Bailey and myself.

Q. Who did they endorse? A. They endorsed Mr. Bailey.

Q. Okay, sir. Would you seek election again under the present at-large system? A. Yes, in 1976.

Q. I'm sorry, would you seek? [731] A. Would I now?

Q. Would you seek election again under the present at-large system? A. No, I would not.

Q. Are you familiar with Mr. Hollice Williams and Dr. Donald Spence? A. Yes, I am.

Q. They have both at times won election to the Pensacola City Council. How would you account for that? A. Well, in the case of Mr. Hollice Williams prior to that time no black had served on any elected body in this county and I think that the people in the area wanted to at least have token representation and they approached Mr. Williams and I think a lot of them knew him because of his job at the YMCA and they, I don't think they thought that Mr. Williams would be a threat because of that job that he had there.

Q. I see, sir. And for Dr. Spence? A. Now, Dr. Spence came later and I think at that time the county perhaps had grown ashamed of just having one and they appointed Dr. Spence to the city council.

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TESTIMONY OF NATHANIEL DEDMOND

[747] NATHANIEL DEDMOND, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q. Good evening, Mr. Dedmond. Your Honor, this is Mr. Nathaniel Dedmond, who lives at 1531 East Cross. He's an attorney, part-time state attorney. He's been in private practice for eighteen years and he's lived in Pensacola for eighteen years. He attended law school at North Carolina Central University in Durham, North Carolina, and attended undergraduate school there also. He has sought election to the county commission in 1968 and ran again for county judge in 1970. Is that a correct statement, Mr. Dedmond? A. I would think that was exactly correct.

Q. Mr. Dedmond, have you been active in any civic clubs or religious organizations? A. I'm active in a lot of clubs but I think that my involvement with those clubs would not significantly affect my testimony one way or the other.

Q. Okay, sir. [748] A. I'm a member of the American –

Q. I'm trying to show, I'm asking if you are involved in numerous community organizations that would give you perspective. A. The answer would be yes.

Q. Could you give us a few examples, please? A. Well, my fraternity. I'm not as active as I should be. My church, the bar association, of course, which are not integrated, because we have no black lawyers actively practicing, but the normal clubs.

Q. Okay, sir, are there any other practicing black attorneys in Pensacola at this time? A. Not at the present time.

Q. Okay, sir.

THE COURT: Aren't you a member of the Bar Association of this circuit? A. I certainly am, Your Honor.

THE COURT: That's what I thought. I thought you said you weren't.

A. No, sir, I said I was, the American Bar, Florida Bar, Society of the Bar.

THE COURT: I thought I've seen you at the meetings. I don't think we're either there as much as we should be, but I've seen you there occasionally when I [749] was there.

A. That is a correct statement, Judge.

THE COURT: Go ahead.

Q. Mr. Dedmond, why did you decide to run for county commission in 1968?

A. Well, I suppose –

MR. FLEMING: Pardon me, Your Honor, just for clarification, not to keep the record confused any longer, I believe it was 1970 Mr. Dedmond was a candidate for county commissioner.

THE COURT: He said 1968. When were you a candidate for county commission?

A. I talked to one of the lawyers today and I told him I thought it was 1970 but I would have to defer to his recollection of the events of the year because I do not have my notes before me.

THE COURT: Well, let's find out when he ran.

A. I think it was 1970.

MR. FLEMING: I have his returns. It was 1970.

THE COURT: He ran for county judge in 1970?

MR. FLEMING: Well, I don't know anything about when he ran for county judge.

THE COURT: He said he ran for county judge in 1970 and commissioner in 1968.

MR. MENEFEE: It was 1970, Your Honor, and I [750] apologize.

THE COURT: He ran for county commission in 1970?

A. That is correct, and two days, two years later I ran for county judge.

THE COURT: Nineteen seventy-two?

A. That would be 1972.

THE COURT: Thank you.

Q. Thank you, Mr. Dedmond. Now, in 1970 then why did you decide to run for county commissioner, please, sir? A. Well, as I had started to say, I think the basis for my running is akin to anyone that jumps in the political arena and that is that you feel you can do a job better than the person that holds the present position.

Q. I see. A. I wanted to become a part of the policy-making or governmental body.

Q. Okay, sir. How did you, at the time of your candidacy how did you assess your chance of winning the election? A. Oh, I didn't take a defeatist attitude. I was optimistic about it but in reality I knew what my chances were and I was prepared to accept the consequences [751] of my candidacy.

Q. What's that reality? A. That reality was the fact that blacks are outnumbered by whites in this county and that from history, just looking at the past, I knew that a black had a very, very small chance of winning an election. And it was possible to do so only if you had a significant number of crossover white votes.

Q. Okay, sir. Is that assessment still true today? A. Exactly.

Q. Would you consider running in the present election system today with that reality? A. I don't know at my age with what has transpired I would consider running for anything, but to be entirely candid with you, no, I would not run. Number one would be that I do not think my chances of winning are great. I think they are nil with the present, within the present political setup. And number two would be a matter of personal choice. But significantly, I think primarily is because I don't have eight to ten thousand dollars to throw away as I had in '70 in my pocket.

Q. You say throw away. Is that the reality of that? [752] A. Well, let me be as candid as I can with you. In 1970 I spent approximately eight to ten thousand dollars out of my pocket. I would estimate that I lost approximately twice that amount of money from the practice of law because I was away, campaigning. Knowing what the realities of political life for a black is in Escambia County, Florida, I think you could in reality say that if I

were to run today that my eight to ten thousand dollars would be thrown away or lost.

Q. I see. A. I would not win.

Q. I see, sir. Thank you. During the course of your campaign what efforts did you make to raise funds in the black community, and would you contrast that with the effort you made in the white community, please, sir. A. First of all I realized at that time that I was not going to receive any significant amount of monetary consideration from the white community. From the black community I did not again expect any significant monetary contribution but that, the reason for my belief and my opinions are based on two different premises. Number one, from the white community I did not expect them to support me monetarily speaking because I knew that being a black, their money, their political dollar was going to go to the candidate who enjoyed the white [753] preference. Okay. I did not think that I would enjoy that preference. Number two, I do not think that I would nor did I receive from the black community any significant money for campaign purposes, not because of their nonpreference for me but because of, number one, their resources. Blacks do not have the economic power that whites have. It's a reality of life. And number two, those who did have the economic resources to support me in a manner consistent with their means were not willing to do so because of the track record for blacks.

MR. LOTT: Objection, Your Honor. The reason they didn't support him are his opinions entirely and under the rule the only opinion evidence he can give is firsthand information based on facts perceived by him, which neither one of these are related to.

MR. MENEFEE: Your Honor, he obviously had to go

in the community and solicit funds from numerous individuals or organizations and in that reaction –

THE COURT: I'm going to let him answer the question, Mr. Lott, without going too far with it.

A. All right, I'll be more precise then. Blacks who were able, who had the resources to support Nathaniel Dedmond would not do so for the simple reason that they thought that I had no chance of winning and it was a question of whether they should throw good money after [754] bad money, if you understand what I mean.

Q. Thank you. Mr. Dedmond, during the course of the campaign did you ever receive any threats or intimidation of some phone calls of a racial nature?

A. Well, I can't say that I received over two phone calls. As far as stares, as far as attitudes and as far as atmospheres are concerned at political rallies, that's another thing. But I've been around for eighteen years and I'm not too easily intimidated.

Q. Okay, sir.

A. Now, number two –

MR. CATON: Your Honor, he's going beyond the scope of the question.

THE COURT: Mr. Caton, what did you say, sir?

MR. CATON: Your Honor, the question was whether he received any phone calls and I think he'd already answered that question.

MR. MENEFEE: My question is broader. I think I said threats and intimidation and harassment.

THE COURT: I think so.

A. Now, as far as my political signs are concerned, after you passed Olive or somewhere in the vicinity of the Nine Mile or Ten Mile Road then my signs somehow became the subject of somebody's intense attention because they were torn down as fast as I put them up.

[755] Q. Are you telling me that that is a racially more hostile area of your county? A. In my opinion, and that is strictly an opinion. But I would also say, If I may –

Q. Yes, sir. A. That in my opinion again while the Nine Mile Road or north of the Nine Mile Road is considered to be the more conservative area of Escambia County Florida, the area to the west of Pensacola, Florida, is also a conservative area as far as any expectation on the part of the blacks to get a significant number of crossover white votes. I think Mr. Oldmixon's records will bear that out.

Q. Okay, sir. Are you familiar with Hollice Williams and Donald Spence? A. I know both of them very well. As a matter of fact I saw Dr. Spence Saturday.

Q. Okay, sir. They had both been successful for election to the city council. A. I can't quite hear you. Will you speak up just a bit.

Q. Yes. They had both won election to the Pensacola City Council. A. That is correct.

Q. Both were originally appointed? [756] A. Of course.

Q. Do you think their appointment was a significant factor in their chance for gaining reelection? A. It was the factor and the moving mode or motivation.

Q. Okay, sir. A. If I might expand on his question,

I don't know whether His Honor will permit me, but you have to understand why that appointment or the appointment of these people, these two individuals, first to an elected position, is, was and will be a significant, well, would be a motivating factor in those individuals or any other blacks or black preference for candidates.

THE COURT: Mr. Dedmond, I've heard others talk about the appointive thing and say it's a difference to them and yet a man like you turns around and says, "I will not run because I have no chance of being elected because of my race." Being appointed doesn't change their race. Do you mean the fact once they're in office the people who wouldn't vote for them when they're first running for office, white people, will nonetheless change their minds and vote for them notwithstanding their race?

A. That is correct, Your Honor, but may I explain my answer. The question is once you have been appointed by, and I hate to use the word, [757] the establishment –

THE COURT: Well, appointed by due process of law. We can try that one, couldn't we, Mr. Dedmond, because that's the way the appointment comes through. Go ahead.

A. I agree with you. I agree with you.

THE COURT: All right, go ahead.

A. But when they're appointed by due process of law, as you say, Your Honor, involved in that is an endorsement on the part of those in power and once you have been appointed by the Governor or anyone, it doesn't make any difference, the city council, they represent the power structure and I believe that is a letter to the other people or a significant number of white voters to vote for that individual.

THE COURT: When you say power structure, what do

you mean? You mean there's a small group of white people in this county who are so powerful that they can dominate and dictate elections?

A. I don't believe that, Your Honor, but I think they have a significant –

THE COURT: What do you mean by power structure?

A. Okay, when I say power structure, I mean those persons who have the finances to support candidates, the power, the contacts to go out and get people if they [758] don't support them financially, to get out and work for those people, to pass the word around, Judge. That's what I mean by the power structure. I don't mean ten people.

THE COURT: In other words they can persuade people who are white to vote for black candidates? It can be done?

A. It can be done, Your Honor. I would suggest to the Court that E. W. Hopkins, president of Mutual Federal Association, can send out a letter to his stockholders or to his depositors and say, "We endorse this man or I think this is a good man," you see, and I give much respect to the man.

THE COURT: You don't know he has ever sent out such a letter?

A. I don't know that, Judge.

THE COURT: I sort of question whether he has. I don't know, and I'm not saying that he does not act and interest himself in races.

A. This is correct, Judge, and I say if he sends out a letter, I give it to the man, he's going to send it out, E.W. Hopkins, Jr., not Mutual Federal, but everyone knows in Escambia County, Florida, he's president of one of the most stable financial institutions in this part of the county.

Okay, in the county, period. [759] And when he sends out a letter and says, "I want, I support this man, I support this man," then I would say, Judge, that I could send out ten thousand letters and he could send out one and I would not be able to persuade as many persons to vote for a candidate as Mr. E.W. Hopkins would.

THE COURT: All right, sir, go ahead.

DIRECT EXAMINATION RESUMED

BY MR. MENEFEE:

Q. Mr. Dedmond, earlier this afternoon there was testimony from Mr. Barney Burks, who's presently president of the Chamber of Commerce and former mayor, that he has been active and he testified he was active in politics and supported Hollice Williams. I realize you were using Mr. Hopkins as an example. Would you say Mr. Burks is an individual of similar qualities?

A. Same stature, the same, right. So I could have used his name and should have, perhaps.

MR. MENEFEE: I have no further questions, Your Honor. Thank you, Mr. Dedmond. * * * * *

TESTIMONY OF JAMES L. BREWER

[800] JAMES L. BREWER, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q. This is Mr. James L. Brewer. He lives at 721 West Lloyd in Pensacola. He is presently a life insurance underwriter with Mutual Savings Life Insurance Company. He graduated from Washington High School and attended Washington Junior College. He's thirty-seven years old,

married, has one child. In 1975 he was a candidate for city council. He's a black citizen. Is that [801] a correct statement, Mr. Brewer? A. that is correct.

Q. Mr. Brewer, why did you decide to run for the city council election, office, in 1975? A. First of all because I reside in the city and there were several changes that I felt should and needed to be brought forth and I felt that I could be instrumental in helping to bring this change about.

Q. Okay, sir. Who was your opponent in the race in 1975? A. Dr. Paul Bruno.

Q. Okay, sir, and what was the outcome of the election? A. Well, he was the victor and I was the loser.

Q. Okay, sir, do you have any recollection of the number of votes approximately? A. Eighteen hundred.

Q. Difference? That's the difference in votes? A. No, that was my vote, eighteen something, somewhere in the neighborhood of nineteen hundred votes, and something with the write-ins, I don't recall exactly.

Q. Okay, sir. Mr. Brewer, when you decided to run for office, what chance of winning did you think you had? [802] A. Well, I didn't put a figure to it but I felt that I would give it the best try that I could and this is what I did. I didn't really think that I could win but I wanted to try and this is what I did.

Q. Mr. Brewer, when you were trying to raise funds for your campaign, what sort of success did you have in the black community, first off? A. They gave what they had, which was very little.

Q. What sort of success did you have in the white community? A. None, no contributions.

Q. Did you try to raise funds in the white community? A. I did solicit some.

THE COURT: You say you solicited from who?

A. From the white community.

THE COURT: You solicited some white people?

A. Yes, I did.

THE COURT: People you knew?

A. Some of them were.

THE COURT: Others you didn't know?

A. Right.

THE COURT: Did you say you had any contributions from them?

[803] A. I did not receive any.

THE COURT: All right, sir.

Q. Did you encounter difficulties in soliciting funds in the black community? A. Yes, I did. Those who would, I did receive some. Do you need a figure amount?

Q. No, I'm interested in the kind of difficulties that you might have encountered in soliciting funds in the black community. A. In soliciting funds we, myself and some of the people who worked in the campaign, we had quite a lot, a lot of difficulty in getting funds. We tried with very little success.

Q. Do you think your race was a major factor in your defeat in this election? A. I would have to say yes, it was.

Q. Mr. Brewer, have you also had experience in radio broadcasting? A. I worked in the radio industry as a radio announcer here locally for about eight years.

Q. I see. Did you have your own program? A. Right. I did.

Q. Do you consider yourself well known in the community? A. Yes. I worked in public most of my life here.

[804] Q. After your experience in 1975 would you run again for the city council? A. Not under present conditions, no.

Q. Okay, sir, you are aware that both Mr. Hollice Williams and Dr. Donald Spence have been successful in elections to the city council, are you not. Are you aware that they have won election to the city council? A. Do I have an opportunity to answer that the way I must answer it?

THE COURT: He asked you if you were aware of the fact that Hollice Williams and Dr. Spence had won election to the city council. You can answer that question yes or no. Are you aware of the fact? A. I'm aware of it.

Q. Okay, sir.

THE COURT: Now let him ask you the next one.

Q. How do you account for their success? A. First, they were appointed first and then afterwards they were elected. They were appointed first.

Q. Okay, sir. Did you campaign in the white community? Did you solicit votes from white voters? A. I certainly did.

MR. MENEFEE: I have no further questions, Your Honor.

* * * *

TESTIMONY OF CLEVELAND McWILLIAMS

[847] Q. May it please the court. This is Mr. Cleveland McWilliams. He lives at 3317 North Alcaniz. He is presently employed by the Escambia County School Board. Presently he's classroom teacher at Pine Forest High School. He's forty-five years old, graduated from Washington High School in Pensacola, from Florida A & M and from the University of West Florida, and he holds a Master's degree. He has previously been a visitng teacher with the Escambia County School Board, and I believe you told me dean, is that correct? A. Yes.

* * * * *

[864] DIRECT EXAMINATION RESUMED

BY MR. MENEFEE:

Q. Mr. McWilliams, have you considered seeking public office? A. Yes, I have.

Q. Would you offer yourself as a candidate – let me back up. What public office might you be interested in running for? A. County commissioner.

Q. Okay, sir. Would you run under the present at-large election system? A. No, I would not.

[865] Q. Would you consider running under a single-member district plan? A. Yes, I would.

Q. Why the difference? A. Well, to run now at-large to me, frankly, would be a waste of time and effort and money too because unless the white have a change of heart the blacks could not win at an at-large election. If you take the total black –

Q. You say the whites could not win in an at-large

election? A. No, the blacks. A black candidate could not win an at-large election.

Q. Do you presently serve as a committeeman? A. Yes.

Q. From your precinct, is that correct? A. Yes.

Q. What precinct is that? A. Ninety-one. It's changed to ninety now.

Q. Is that a heavily black registration precinct? A. Yes, it is.

MR. MENEFEE: Okay, sir, thank you very much. I have no further questions.

* * * * *

TESTIMONY OF EARL J. CROSSWRIGHT

[886] Q. No, that's all right. All right, this is Mr. Earl J. Crosswright. His address is 1202 East Yonge Street, I guess. A. Yes.

Q. Pensacola, and that's inside or outside the city? A. Inside the city limits.

Q. He's fifty-eight years old. He's presently the principal at A.M. DeVaughn School in the public school system. Did I get that right? A. Yes.

Q. He's been principal there twelve years. He's been employed by the Escambia County School Board thirty-one years. He was born in Evansville, Indiana, but came to Pensacola in 1947 as a teacher at Washington High School. He has a bachelor's in education from Lincoln University in Jefferson City, Missouri; a master's of education from Wayne University in Detroit. Now, Mr. Crosswright, is that correct? A. Yes.

Q. Have you ever offered as a candidate for election in local government in Escambia County or Pensacola? [887] A. None other than precinct committeeman.

Q. All right, sir, you have been a precinct committeeman in the Democratic Party organization? A. I am currently.

Q. You are currently? A. Precinct fifty.

Q. How long have you been a committeeman for precinct fifty? A. Four years.

Q. Okay, and could you tell the Court how you became a committeeman, how you got involved in that? A. Well, I've been interested in politics throughout my entire tenure here in Escambia County. We

needed someone to sort of go through the precinct and muster votes and get people to register and this kind of thing and we didn't have anybody who was actively involved so I attempted the chore of doing this.

Q. All right, sir, is that an elective office? A. Yes, it is.

Q. All right, who votes for you? A. Just the people in precinct fifty.

Q. Okay, is that precinct predominantly black? A. No.

Q. What's the percentage in that precinct? [888] A. It has changed since the voting but it's approximately thirty-seventy white.

Q. Thirty-seventy white?

THE COURT: Seventy percent white?

A. Yes.

Q. Were you opposed in that election?

A. No.

Q. All right, sir, did you ask anybody before you offered as a candidate or did anyone ask you if you would run as a candidate for that committeeman position? A. I don't recall anybody having asked me to do this.

Q. Who was the committeeman there before you, or did you have one? A. Yes, we had one. His wife is the female committeewoman at this time but I've never seen her nor him and I can't think of who he is at present.

Q. Mr. Crosswright, have you ever considered running for an elected office as school board member or county commissioner or city councilman? A. The idea has been in my mind at certain times, yes.

Q. Any of those in particular that you've thought about? A. Yes, city council and county commissioner.

[889] Q. Okay, sir, why have you decided not to offer as a candidate for those offices? A. Well, I have seen that heretofore no one of color has been able to make it so I thought it was a matter of throwing away money and this is why I didn't attempt it. I didn't have the money to throw away. This is one of the problems.

Q. Does the fact that the elections for all these bodies are conducted at-large in the county or in the city, as the case may be, affect your judgment and your decision? A. Most definitely.

Q. And would you be more inclined to offer as a candidate if there were single-member district elections? A. Yes, sir.

Q. Mr. Crosswright, did you testify at hearings conducted by the Escambia County Commission on the question of charter government for Escambia County? A. Yes, sir.

Q. When was that? A. During, I don't know the time.

Q. What year was it? A. This past year.

Q. All right. [890] A. When they were going from, I testified at the Junior College at one time and on Jordan and Palafox, the clinic, Health Department there.

Q. What was the announced purpose of these hearings? A. To get the citizenry to give their opinion about the charter government program that was to be placed before the electorate.

THE COURT: This was before the committee, was it, Mr. Crosswright? That's where you appeared, before Mr.

Tennant's committee? A. I wasn't appearing. It was a matter of being in the audience. I was there during the time.

Q. What he means, was it the county commission holding the hearing or some committee appointed by the county commission? A. I've been involved in both. The very first time I was involved when the committee, the ad hoc committee was given an opportunity to make up the program itself, and I was involved there. When they came out with the program stating there would be five people voted in the precincts and two at-large, I think not precincts but in the district, two at-large.

Q. I wasn't aware of that. Tell me about that. When was that occasion you met with – I take it this was –

[891] THE COURT: That must have been the committee, of course. A. Yes, this was the committee.

THE COURT: All right, sir.

A. That the county commissioners gave the responsibility of putting together the charter government package, and of course I was at one of those meetings and this was open to the public also. And of course at that time they did have, they presented this to, as I understand it now, to the county commissioners. But at the other meeting at Palafox and Jordan this was removed from the package and it was changed to the at-large type program and I spoke at that particular meeting.

Q. What did you say at that meeting, the meeting of the commissioners now? A. I talked to the group. I was concerned about who represented me in precinct fifty since I had been a precinct committeeman for three years and had never met the, my district personnel.

Q. You mean your district, the commissioner who resided in that district? A. Yes, He had had an election

and he had not been in our district that I knew of, in my precinct, to find out who was voting for him or even to muster votes. I needed to know who the individual was because I was [892] having problems with baseballs being knocked into my yard and breaking my windows and I wanted some relief from this point of view so I went to this meeting to find out primarily who my county commissioner was and I asked who was the commissioner. I had already asked in the precinct and I couldn't find people in the precinct to know and it was amazing to find out that very few people even knew who their precinct committeeman was. I also went to City Hall –

Q. Knew who the precinct committeeman was or county commissioner? A. Not precinct committeeman; county commissioner. They didn't know who he was either.

THE COURT: This is not exactly what you asked him about. You wanted to know about the hearing, didn't you. You went there to find out who was the commissioner resident in your district, is that it?

A. That's right. That was my purpose in going in the first place.

THE COURT: You do know that the county commissioners represent all the people, not just the people in the residents district? You understand that, don't you?

A. I do. Yes, I did at that particular time.

THE COURT: Why didn't you go to the county [893] administrator or something instead of trying to find out about the county commissioner, just go to him? He's just resident in your district. All the people in the county elected him like all the rest of them.

A. I thought all were responsible for everybody in the committee, in the district, also, to do the things for the people that voted for them.

THE COURT: Anyhow that was the reason you were looking for him. Go ahead, Mr. Blacksher. Go ahead. That was the reason you were looking for him anyhow. Go ahead, Mr. Blacksher.

Q. Were you raising this point, this question, at the hearing, to make any point with respect to the apportionment proposal, the district proposal part of the charter government? A. Yes. This I was against at that particular time because it did not offer to me any relief because the commissioner at-large did not think enough of the people in his precinct, in his district, to see if they really needed any relief of any nature.

Q. So you spoke at the hearing in favor of the single-member districts? A. Yes.

THE COURT: And your reason for doing it was what now, sir?

[894] A. Well, I feel that any time that we have at-large type voting we do not have the contact, personal contact with the people who are supposed to represent us.

THE COURT: But you're saying your reason for wanting a single-member district was that you felt if you were in a district where your people alone represented him he would be more responsive to you than he would be at-large, is that it?

A. Yes. we would definitely know him at any rate even if he didn't respond to our wishes. At this time we didn't know him.

MR. BLACKSHER: That's all I have, Your Honor.

MR. FLEMING: May we have just a moment, Your Honor. The transcript of this particular proceeding is in the court file.

THE COURT: Do you want to cross examine him on that?

MR. FLEMING: It may be pertinent. Perhaps Mr. Lott can begin.

THE COURT: Go ahead, Mr. Lott.

MR. BLACKSHER: Your Honor, for the record, there was a transcript of this particular testimony that was filed, I guess, by Mr. Lott.

MR. LOTT: Right.

[895] MR. BLACKSHER: Pursuant to Your Honor's order that the parties make known any contacts with class members, so it's already in the file on that basis.

THE COURT: All right, sir. I don't know what he's looking for. Anyhow I want to cross examine this witness. Proceed, Mr. Lott.

MR. LOTT: I'll go ahead and start if Mr. Fleming can find it in the meantime.

CROSS EXAMINATION

BY MR. LOTT:

Q. Mr. Crosswright, you had a conversation on the telephone with Mr. Caton a while ago, is that not correct, Mr. Don Caton, the city attorney? A. I'm pretty sure it's Mr. Donald Carr.

Q. Mr. Carr? A. Yes, some person called me by the name of Donald Carr.

Q. You talked about your feelings on charter govern-

ment at that time, is that correct? A. I didn't talk about it. I told him, I didn't give him any statement whatsoever.

Q. Okay, I think that's a good enough predicate, Judge, for what I'm leading up to. The conversation you had with him, did you express the opinion that the [896] question of whether or not blacks would have more strength under single-member districts as opposed to at-large districts is a very difficult question to answer? Is that what you told Mr. Carr? A. Yes, I did, because it would be a very difficult question to answer.

Q. Okay, so can we determine from that it would be your opinion that you're not sure whether it would be more advantageous for blacks to have at-large representatives or single-member representatives? Is that basically it?

A. No, no, I was stating that it would not matter whether he was, I'm concerned with the entire population, whether it be black or white. I think it would be better. When he said black, that ruled out any statement that I might make because I definitely feel it would be better for whites even to be represented by –

THE COURT: Mr. Lott, I believe his position is that he thinks, in other words your position on single-member districts is not concerned really with whether it would aid or help black people getting elected; your position on it is that regardless of who's elected he would be more responsive to the people in that district because they elected him and that's the reason [897] why you feel like single-member districts are advisable?

A. That's it, Judge, exactly. It would be good for white, Jews, Gentiles.

THE COURT: He made his position pretty clear to me, Mr. Lott.

Q. Okay, do you have an opinion as to whether blacks would have more benefit under a single-member district system as opposed to an at-large district system?

A. I think all people would.

Q. You think all people would?

A. Yes.

THE COURT: He's said that twice for you now, sir. Go ahead.

MR. LOTT: Well, to me, Judge, that seems inconsistent with the statement that it would be a very difficult question to answer whether blacks would have more strength in a single-member district. How do you reconcile that?

A. Well, you were indicating, Mr. Carr was indicating that only blacks, I inferred that he meant only blacks would be benefited by that and I couldn't make that statement because that isn't the way I think.

THE COURT: Mr. Lott, I'm at a loss why you're going on with this gentleman with this testimony. You go [898] and I don't know why you pursue it.

Q. Did you also state in the course of that conversation with Mr. Carr that you did not believe the county or the school board wanted to keep at-large elections because of racial reasons but instead that you felt that the only reason that they wanted to continue at-large elections was because they wanted to preserve the fact that they were presently in office? Did you express that opinion?

A. I didn't express it in the manner in which you are giving it. I did say, I did say that politics is a situation where those that are in would naturally want to do whatever would keep them in office.

Q. Is it your opinion that the reason the at-large system for school board and county elections are presently in effect is not because of racial reasons –

MR. BLACKSHER: Objection, Your Honor, that's getting a lot of mileage out of the testimony that came in from this witness's mouth earlier.

THE COURT: It is getting a lot of mileage.

MR. LOTT: Your Honor, the testimony was that he appeared at a charter government committee meeting and he spoke in favor of single-member districts and wanted to change from an at-large system to a single-member district.

[899] THE COURT: You went far afield on that one, sir. I'm going to sustain objection to that. That went too far out in opinion evidence and everything else. Objection sustained.

Q. At the Board of County Commissioners' public hearing on charter government did you express the opinion that all of the people should elect the people that they, that represents them? Is that what you testified, you stated at the public hearing?

THE COURT: Mr. Lott, if you've got something specifically he said there, because he has testified twice now, three times; he's said three or four times he thinks they ought to come from single-member districts.

MR. LOTT: Yes, sir, and at the public hearing I have a transcript filed in the court record that says all the people that are elected should represent all the people. Now, is that your statement?

A. I don't recall, but if it was, it was in it, the intent of it was not, I couldn't feel that way because I most certainly feel that the people in North Florida should not be elected

by the whole State of Florida. And that was an erroneous statement if I made it.

Q. Well, in the context of county commissioners?

A. Beg pardon?

[900] Q. In the context of county commissioners in Escambia County does that statement hold true that you made?

A. No.

Q. You did make that statement, did you not?

MR. BLACKSHER: Your Honor, the witness answered "No," and I think counsel is arguing with the witness.

MR. LOTT: I'm not arguing. I'm asking if he made the statement.

THE COURT: He says he does not know but if he did make it, it is not what he meant to say or what he has said today. It's pretty clear, Mr. Lott.

MR. LOTT: I don't have any further questions, Your Honor.

THE COURT: Any other cross examination? Any redirect with this witness?

MR. BLACKSHER: No, Your Honor.

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[3] TESTIMONY OF WILLIAM H. MARSHALL

called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STILL:

Q. May it please the court this is William H. Marshall, who is fifty-two years of age, was born here in Escambia County, has been with the Escambia school system for nineteen years and is now the principal of Spencer Bibbs Elementary School. Is that correct, Mr. Marshall? A. That's correct.

Q. All right. Mr. Marshall, have you ever run for the City Council? A. Yes. I've run for the City Council on two occassions.

Q. Which two years did you run? A. I think it was 1969 and '71.

Q. All right, sir. What ward to you live in? A. Ward 2.

Q. All right, sir. Have you ever run for any other office in Escambia County? A. I've run for the State Legislature.

Q. Have you also been involved in other people's campaigns? A. Yes.

[4] Q. All right, sir, whose campaigns particularly? A. Well, I am an active member of the Democratic Party Local Committee and also State Committee so since 1968 I've been actively involved.

Q. In 1969 when you first ran for the City Council, yes, the City Council, what was the motivation for you to

run? A. Well, at that time no blacks had been previously elected for office and I felt that it was a good time for me to make a try. I had a pretty good reputation within the community and I was very well known.

Q. All right, sir, what chance did you think you had of winning when you decided to run? A. Well, I didn't feel like that I had much of a chance but I was hoping.

Q. All right, sir, why did you decide to run for the City Council, for instance, rather than a county-wide office? A. At time because the bulk of the black voters lived within the city limits.

Q. If the City Council remains an at-large position would you seriously consider running for that position again? A. I would have to think about it until the climate changes; I think it would be an act of futility.

Q. All right, sir, what about running for a County [5] Commission office? A. The same thing would hold here with the present system.

Q. All right, if it remained at-large? A. Right.

Q. When you ran in 1969, what was the approximate cost of your campaign? A. Well, in all I think approximately it was close to five thousand dollars.

Q. How many thousand? A. five.

Q. Five thousand dollars, and in 1971 about how much did you spend? A. About the same.

Q. Do you remember how much you spent on your legislative race? A. It was, I can't give the exact figures but it was more than that amount.

Q. More than five thousand dollars? A. Right.

Q. Did you find it was difficult to raise this kind of money? A. Very difficult.

Q. At the time that you ran for the City Council in 1969 and 1971 was there a qualifying fee to run? [6] A. In '69, no.

Q. What about '71? A. In '71 I don't, I'm not certain but I don't think that fifty dollar fee was in effect at that time.

Q. If it was not in effect in 1971 do you know when it was put on? A. It was sometime after that. I think it was about four or five blacks in the race in '71 and after that they got the fifty dollar fee.

THE COURT: That's a primary party fee?

A. No, this is the city election.

THE COURT: This was in the city election?

A. Yes.

THE COURT: I thought you were talking about a fee in the representative's race.

MR. STILL: No, sir, we're talking about the non-partisan city race.

THE COURT: All right, sir. Go ahead.

Q. Were you the only black who was running for the City Council in 1969? A. If I remember correctly, yes.

Q. Were you the first black who had run since 1955 for the City Council to your knowledge? A. To my knowledge, yes.

Q. Were you the first black who had run since 1955 for the City Council to your knowledge? A. To my knowlege, yes.

Q. All right, sir. Did you receive any support [7] from the white community in 1969? A. At the time there were few whites who were active in civil rights work. I got some support from them and if I remember correctly I got a little help from the Young Democrats.

Q. Did any white publicly endorse you? A. No.

Q. In 1971 did any white publicly endorse you? A. No.

Did you get the same type of help behind the scenes in 1971? A. Yes.

Q. Both Hollice Williams and Dr. Spence have been elected to the City Council but you and other blacks have not been successful in being elected to the City Council. To what do you attribute this difference?

MR. CATON: Your Honor. I'll object to that question as to what Mr. Marshall attributes it to. The facts speak for themselves and I believe it's immaterial.

THE COURT: You're asking for an opinion now.

MR. STILL: Yes, sir, I am asking for an opinion but it is based upon his observation of those campaigns.

THE COURT: Well, I'm going to let him give his observation but I guess to that extent I'll let it come on in. To that extent the objection will be overruled. Go ahead.

[8] Q. Thank you. A. First I would like to say I think I'm the person responsible for Hollice Williams' initial appointment to—

THE COURT: He didn't ask whether you were responsible for his initial appointment. He wants to know why were they elected when you weren't, any facts you can give us respecting that.

A. Well, my only thing is that Hollice had worked for

the YMCA all of his life, we were in high school together, and he was very familiar with the city fathers.

THE COURT: He worked with white people and fairly familiar with city fathers?

A. He worked at the YMCA.

THE COURT: YMCA?

A. Right.

THE COURT: All right.

Q. By the way, at that time were there two YMCAs in town?

MR. CATON: Your Honor, I object to that question as being totally irrelevant.

THE COURT: What is the relevance of that, sir?

MR. STILL: Simply to show segregated institutions in the city at that time, Your Honor.

THE COURT: I'll let you ask him. Go ahead. I guess [9] it might have some small relevance.

A. To my knowledge there weren't any blacks YMCAs at that time.

Q. Were blacks members of the other YMCA that you know of? A. No, I don't think they had a branch.

Q. Was the Ku Klux Klan active in any way in opposing your candidacy in any of the three elections in which you have run? A. Only from second hand information. I can't give any first hand information on this because of the nature of how they operate.

Q. All right. Have you ever had any contact with the

Klan because of any of your activities? A. During the Escambia High School crisis I was threatened and I had to have the Sheriff's Office and City Police Department to guard my home along with my ex-wife's home.

Q. All right, sir. Do you know of any white candidate over the last fifteen years who has run who has publicly advocated more vigorous enforcement of the Equal Employment Opportunity laws and the Fair Housing laws in Escambia County or in the City of Pensacola?

MR. LOTT: Objection, Your Honor. Whether or not this person here knows of the fact that any particular person [10] espoused that view is of no relevance at all. If they want to prove that fact it's up to them to come in and show that case is true but there's no indication here this gentleman has made any kind of research to show the negative of a question like that and his determination of that is of no relevance at all.

THE COURT: I suggest to you he's been long active and interested in politics in this county, Mr. Lott.

MR. LOTT: Yes, but the fact he doesn't know anything about it doesn't mean it didn't happen and therefore it can't be relevant.

THE COURT: I agree with that. There might be some slight relevance to it and that's about all it amounts to. You may answer the question.

A. Will you repeat the question, please.

Q. Yes, sir. Do you know of any white candidate who has run for office in Escambia County or the City of Pensacola during the last fifteen years who has advocated more vigorous enforcement of the Equal Employment Opportunity laws or the Fair Housing laws? A. No.

Q. Do white candidates sometimes come to rallies in black neighborhoods? A. Yes.

Q. Do they make speeches to blacks at those rallies? [11] A. Yes.

Q.Do they make promises to blacks at those rallies? A. Yes.

Q. At any of those rallies have you ever heard anyone promise more vigorous enforcement of the Equal Employment Opportunity laws? A. No.

Q. All right, sir. Now, in 1969 when you first ran for the City Council what were the issues that you espoused and talked about in your campaign? A. Basically, if I can remember correctly, paving, housing and jobs were basically.

Q. What was the issue about paving? A. Well, in most of your black community areas where they're strictly black community you'll find that at that time, as now, very little paving was done and very little effort on the part of the city to provide the conveniences or services that were being provided in other portions of the city.

Q. What was the issue regarding housing? A. At that particular time and now Pensacola Housing Authority was still not doing, in our opinion, carrying out their responsibility to the citizens who live in these particular areas, and also at that particular time there was segregated housing.

[12] Q. And did you advocate desegregating public housing? A. Yes.

Q. What was the issue regarding jobs? A. Jobs, more jobs; at that particular time no blacks were in supervisory

positions within the city. The only person that we had that was in any kind of a managerial position was Mr. Sanders at the Municipal Auditorium and other than that they were all at lower level of employment.

Q. What as that gentleman's name? Sanders? A. Yes, Walker Sanders.

MR. STILL: I believe that's all the questions I have of Mr. Marshall.

* * * * *

[30] MR. STILL: Your Honor, I believe you had some questions of the witness.

THE COURT: The one question, yes. I'll take just a minute. What I was going to ask you, Mr. Marshall, was this. You testified back in 1969, the reasons about the housing there and it was segregated and that kind of thing. Are those conditions, you may have partially answered, at least you have certainly to some extent. For example in this area today do you have a segregated housing problem that results from official action? I realize people tend to segregate themselves in housing. You and I know that. I'm talking about a segregation problem that results from official action. That is what you're saying you had back there.

A. Right.

THE COURT: What about that situation today?

A. To a certain extent, yes, because blacks applying for housing under the Pensacola Housing Authority, they're either sent basically to the court here, I'm sorry, Gonzales Court now and the court downtown, but –

[31] THE COURT: Aren't some white people sent there too?

A. Yes.

THE COURT: So it's not segregated?

A. Not entirely but it's easier for them to get on, if they're on the waiting list and there's available housing after a certain number of units have been filled in some of these areas such as Gonzalez and also Moreno Court, blacks aren't going to get those. They'll have to be put on the waiting list for Morris Court and possibly Attucks Court.

THE COURT: Do white people have to be put on the waiting list?

A. Yes, but, see, if they want to, Attucks Court is 100 percent black. Morris Court is 100 percent black.

THE COURT: Well, how does that prove any official segregation, though?

A. Well, it's not official because it's the law of the land that it can't be official but it's enacted in other ways.

THE COURT: Well, I know, but how could it be enacted, if you've got a list and go by the list?

A. The Pensacola Housing Authority I don't think acts according to what, the way they're supposed to act, and it's been pointed out in the last study.

THE COURT: I'm sure I understand that. You are saying you believe the Authority are intentionally [32] discriminating against blacks and doing that today?

A. I believe the people making the decisions are doing it

on their own. It's not an official part of the code but they're still doing it.

THE COURT: You mean making decisions based on racial factors?

A. Right.

THE COURT: You have nothing really, no hard evidence of that; that is just your personal opinion you're expressing from what you've observed?

A. Well, it is my personal opinion.

THE COURT: That's all I need, Counselor.

REDIRECT EXAMINATION

BY MR. STILL:

Q. Mr. Marshall, let me ask you a few questions that were covered in cross examination. How were you elected? Are you elected or appointed to the County Democratic Committee? A. You are elected from your precinct.

Q. All right, sir. Now, is the precinct that you live in predominatly black? A. It's approximately, I think, about, well, it's more than 50 percent black.

Q. All right, sir. Now, what about the state committee? Are you elected or appointed to that? [33] A. We are elected in our general meeting by the delegates.

Q. At a meeting of delegates? It's a convention type thing, is that right? A. Right.

Q. Are you elected to represent a particular area? a. No.

Q. It's for the whole county? A. Right.

Q. How many are elected from Escambia County? A. There are two state committee people that are elected, a committeeman and committeewoman.

Q. Now, the party post that you hold, the state party, secretary-treasurer, is that elected or is that appointed by someone? A. That's elected. Well, let me explain the process. First you get on the ballot in order to be elected to the local county committee. All right, from then on it becomes an in-house function of the party. The officers are elected by the committee members at local level and also the officers at state level are elected by state committee members.

Q. Approximately what percentage of the Escambia County Democratic Committee is black? A. I'd say roughly 40 percent.

[34] Q. Excuse me, I didn't hear you. A. Roughly 40 percent.

Q. Forty, all right. What percentage of the State Democratic Committee is black? A. Less than 1.

Q. Less than 1? A. Yes.

THE COURT: Less than one what, sir?

A. One percent.

THE COURT: Of the State Democratic Executive Committee?

A. Yes.

THE COURT: Is less than 1 percent white?

A. Black.

THE COURT: Less than 1 percent black. I thought he asked about white. Well, your local executive committee –

MR. STILL: If I asked about white I'm sorry. I meant to ask about black.

THE COURT: Your testimony about the local committee, is that 40 percent white or black?

A. It's about 40 percent black.

THE COURT: Forty percent black.

Q. Mr. Marshall, have you participated in drawing up with the Democratic Party or has the Democratic Committee while you've been a member of it, State Democratic Committee, drawn up any sort of affirmative action plan? [35] A. Yes.

MR. RAY: Objection. It exceeds the scope of direct.

THE COURT: How's that? You're starting all over on direct examination, aren't you? Why didn't you bring this out on direct?

MR. STILL: Your Honor, I didn't go into party posts on direct examination. It was brought up on cross examination.

THE COURT: No, it was brought up in response on cross but now you're getting into something even beyond party nomination, getting into affirmative action. If you want to reopen your direct examination I'll let you do it but I'll give him opportunity on cross.

MR. STILL: I'm not trying to.

THE COURT: You're reopening by going into an area of affirmative action because nothing has been brought up with the witness on it, as I see it. As you wish to do so, proceed to do so and we'll go back to cross examination.

MR. STILL: Your Honor, may I explain why I'm going into this area?

THE COURT: Yes, sir.

MR. STILL: The inference that can be drawn from cross examination was that a, that blacks have an equal opportunity or very good opportunity to be elected to Democratic positions. I am simply trying to show that it is a national policy of the party, Democratic Party, that there must be affirmative [36] action plans.

THE COURT: If that's the kind of affirmative action you're talking about it might be different. Go ahead, sir. I thought you were going into something else.

Q. All right. Mr. Marshall, what sorts of things does this affirmative action plan cover? A. Well, it guarantees that minority groups will be represented in all strata of the Democratic Party.

Q. All right, sir. Now, are those, is that a national policy of the Democratic Party? A. It is the national Democratic Party down through the state into the local county unit.

THE COURT: Counsel, with deference to you, in going into this, it is pretty well established blacks are treated all right by that party. Now you're just showing even more firmly they do pretty well by them. I don't understand. You're not adding or detracting anything from the prior testimony.

MR. STILL: I'm simply trying to show that the motivation for that was that it was a national policy.

THE COURT: Regardless whether it's a national policy or local policy or whatever, it may be, it's policy that's effective, isn't it? You're certainly not going to show to the contrary, it is not local policy. Go ahead, sir. I just think you're getting stretched out, Counselor.

[37] Q. Let's speak for a moment, Mr. Marshall, about rallies that are held in black communities. You were asked whether candidates come and make promises. I believe you also responded that racists will sometimes come in and make statements at these rallies in the black communities. Do those white candidates who come there follow through on those promises once they're elected?

MR. RAY: Objection to exceeding the scope. He's getting into responsiveness. If he wants to recall the witness on that, let's do it.

THE COURT: No, objection overruled. You went into this on cross.

A. Well, very little has been done by, I guess, the majority of the candidates that come in and make these promises. They come in with their statements that, what they're going to do, but we see very little of it.

Q. About what percentage of the candidates for City Council come to those rallies in black neighborhoods? A. If it is a rally that's sponsored, for instance, by a group or something, usually you have quite a few of them turn out.

Q. Is it unusual to see white candidates at these rallies? A. No.

MR. STILL: Thank you very much.

* * * * *

[43] MR. CATON: Your Honor, I don't understand how if a witness decides he didn't like what he said he can come back again, and this opens up the door to all witnesses who decide they didn't like what they said.

THE COURT: Mr. Caton, if it opens up the door you take him on cross examination and see why he changed his mind. It goes to the weight of the evidence. The man has a right to change his mind on testimony and it goes to the weight. It is true the question came late and it's a quick question and answer. Note the objections for the defendants. I'm going to let you call him back for the limited purpose only of going into that one statement, nothing else.

MR. STILL: Yes, sir, that is all.

THE COURT: All right, call him.

MR. STILL: Mr. Marshall.

WILLIAM H. MARSHALL,

recalled as a witness by the plaintiffs, having been previously duly sworn, further testified as follows:

DIRECT EXAMINATION

BY MR. STILL:

Q. Mr. Marshall, you testified yesterday and so you're still under oath. Mr. Marshall, yesterday there as a question to you regarding access to the political process which came, I believe, at the end of cross examination. What do you mean or what did you mean in answer to that [44] question about access to the political process? A. I only meant that legally the access to the political procedure was there, legally. The Democratic Party throughout its struc-

ture provides for equal opportunities for everyone but you get snarled down when you get into the realities of being able to fully participate in the political process. You can't, for instance, garner enough funds by being black, you can't make the necessary contact. Very seldom will you get invitation to the clubs or organizations that will mean the difference in whether or not you are elected, such as the Lions, Kiwanis and et cetera, and this is what I meant. I didn't mean that you had full access to all of the ramifications of the political process.

Q. Thank you, sir. Now, after you testified yesterday did you come in the courtroom and listen to any of the testimony? A. Yes, I did.

Q. Do you remember which witnesses you listened to? A. I listened to Mr. McWilliams, I think, Mr. Royster and Mr. Crosswright. I think these were the ones.

MR. STILL: All right, thank you very much, Mr. Marshall.

THE COURT: Cross examination?

MR. RAY: Thank you, Your Honor.

[45] CROSS EXAMINATION

BY MR. RAY:

Q. Mr. Marshall, how did it come about that you were here again this morning? A. I was asked to return by the lawyers.

Q. When did you discuss with them your testimony yesterday and therefore again today? A. Basically I didn't discuss it. I was asked to, for an explanation.

Q. Did the attorneys ask you for an explanation of what you meant by your testimony yesterday? A. Yes.

Q. And the explanation that you gave them was what? A. Well, the same as I've stated this morning.

Q. I see. Now, what you stated this morning was that there was, there is the legal access to the political process? A. Right.

Q. You don't deny that? A. No.

But you're saying as a practical matter you can't fully participate? A. Correct.

Q. Okay. You mentioned three times, invitations to such things as Lions Clubs and Kiwanis Clubs. [46] A. Yes.

Q. That is one example of what you mean about not being able to fully participate, is that correct? A. That's correct.

Q. Would this be for purposes of being able to speak to the memberships of those clubs and address them in meetings? A. That's correct.

Q. For instance if you were a candidate for office?

THE COURT: Is that what you meant by that, Mr. Marshall? A. Yes.

Q. Just to make sure I understand what you're saying, Bill, if you were a candidate for office you are not, because of your race, the recipient of invitations to speak to those luncheon clubs and whatever about your candidacy? A. That is correct. Nor do we get full participation from the media either.

Q. Okay, now, as far as –

THE COURT: What was that, sir?

A. From the media.

THE COURT: What do you mean?

A. We usually are not given the same kind of coverage as white candidates in the media.

[47] Q. Have you – please recount to me all the details of each and every instance when you requested media coverage and the same was not affored to you. A. All right, during my, at least all of my campaigns, I talked to Earle Bowden at the News-Journal and I talked to others and I haven't received the same kind of coverage. Another thing is that they don't –

Q. Let met interrupt you at that point now. You say you talked to Earle Bowden but you haven't received the same type of coverage? A. Right.

Q. Newspaper coverage? A. The same kind of coverage that my opponents or other white candidates had from the media. For instance our announcements that we're going to run, whereas the white candidate can get almost a full page on the front page announcing his candidacy black candidates can't do this. We haven't been doing this.

Q. Okay, as far as you're concerned, your races, you have never received a full page on the front page announcing your your candidacy, is that correct? A. Right. That's correct.

Q. How much column inch or space would your announcement of candidacy take up in the newspaper, and on what page or section would it be? [48] A. Well, on an average the news media usually along with pictures an-

nounces, gives the biographical data of a candidate and also makes the announcement that he's going to run for, say, an office, and et cetera. Usually when blacks are going to run, if they get anything it will be a black enters this particular race or a black is vying for such and such a race, and this is the way it goes.

Q. Okay, Mr. Marshall, I'm going to ask you to limit your comments as I've limited my question. I want to talk about your races first. How much publicity has the newspaper given to your races, your race? A. A very minimum.

Q. And where have those articles appeared in the paper? A. Mostly, most of the time when they have appeared on an average they were in a hidden comment or in the full reporting, for instance, on a particular race.

Q. I see.

THE COURT: Everybody else was in the full report?

A. Yes, but they're getting along with that, they're getting individual announcements and et cetera. Anything they do, for instance, if they speak to –

THE COURT: All right, sir.

Q. Okay, sir, you have never had a separate article announcing your candidacy? [49] A. I don't recall one.

Q. Now, this is what you mean by full participation of the media as far as the newspaper is concerned? That's your complaint in that regard, is that correct? A. That's correct.

Q. Okay, now, I think you mentioned other black candidacies that you've observed. I believe your testimony

was that there is always some suggestive headline that a black enters this race. A. Right.

Q. Is that correct? A. That's correct.

Q. Cite me the names of the black candidates who have been subjected to that kind of publicity and when. A. All black candidates as far as I know have been subjected to the same type of treatment, either the first black to do this or the black candidate, and specifics, my race with Mr. Brockett for the City Council, this was vividly pointed out. It in my opinion polarized the community, black against white.

Q. That was Marshall against Brockett, what year? A. This was 1971 if I'm not wrong.

THE COURT: Who was that? Broxson, did you say?

A. Brockett.

THE COURT: B-R-O-X-S-O-N?

[50] MR. CATON: B-R-O-C-K-E-T-T.

THE COURT: Brockett.

Q. What was done in that race? A. The same kind of polarization. I remember the news media, the paper, a day prior to election said, "This is your choice," and here we are; I think the editorial read that, "You will know what to do," something to that effect. This was in the editorial the day prior to the election.

Q. Was this the article in which the newspaper sets forth their endorsements of candidates? A. This is one of the articles where they, those of us locally know that they, for the past few years they have not literally endorsed but what they have done, they have circumvented endorsement by projecting certain candidates.

Q. By doing what? A. Projecting certain candidates. I meant by that they have wrote their stories in such a slanted way where it was evident who they were endorsing or selecting.

Q. Is that what happened between you and Mr. Brockett in 1971 in your race for the City Council? A. That's correct.

Q. That the day before the day of the election there was a slanted story against you and in favor of Mr. Brockett? A. Correct.

[51] Q. And did it have your pictures? A. I don't think this particular article had a picture of mine in it.

THE COURT: You say this was the day before your election?

A. The day before election. I think there was also an article the morning of the election.

Q. Okay. And do you remember any better what it said, either that slammed you or was that in favor of Brockett? A. Well, it was typical of what the News-Journal usually does in reporting, particularly on black candidates. The only, well, number one, they make sure that you are, it's known throughout the county that you are a black candidate with the insinuation that, "You know how to vote." Not only that is that WCOA the day of election polled precincts –

Q. Mr. Marshall, let me ask you to limit your comments, please, to the newspaper. We're going to take every one of the media as far as it relates to you and other black candidates, so let's talk about you and the newspaper.

THE COURT: First, is what you're telling me, and you'll get to the rest – go ahead.

MR. RAY: Pardon?

THE COURT: You're telling him let's stay with this and you'll get to the rest later.

MR. RAY: Yes, sir.

THE COURT: Go ahead.

Q. Okay, that was in 1971? A. If I remember correctly.

Q. Okay, any other instance in which this denial of full participation in the media by the newspaper, as far as you're concerned? A. This has happened in each election that I have entered into and I ran in three.

Q. Okay, let's take them. What's the next one after 1971? A. It would be my legislative race.

Q. When was that? A. If I'm not mistaken I think this was during the '74 term.

Q. Okay, who did you run against? A. Presently Senator Tom Tobiassen.

Q. Okay, what did the newspaper do to you then? A. It did the same kind of reporting on me that it had done previously.

Q. Specifically? A. Specifically slanted articles by the mere fact that I was black and on one occasion it noted that I happened to have been a very strong black candidate.

[53] Q. What type of article was it? Was it an endorsement article, a genuine news article, announcement of candidacy? A. I think this was in the overall article and also the editorial, as usual, the editorial comments.

Q. Editorial, okay. Anything else in that race? I assume that was with regard to the general election. A. Right.

Q. Who had the newspaper endorsed in connection with the Democratic primary prior to that general election? A. I can't recall that.

Q. Okay, anything else in that election? A. Nothing that I can specifically recall.

Q. Okay, what was your next race? A. I believe it was only three.

Q. Okay, you mentioned Marshall versus Brockett in 1971, Marshall versus Tobiassen in 1974. A. Marshall versus Elebash in 1969.

Q. Okay. Did the newspaper do the same thing to you then? A. Correct.

Q. Specifically what? A. Again lack of proper or equal coverage and slanted articles that, when we were covered.

* * * * *

TESTIMONY OF DR. CHARLES L. COTTRELL

[3] DR. CHARLES L. COTRELL,

called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MENEFEE:

Q May it please the Court, this is Dr. Charles L. Cotrell. He lives at 508 West Craig Street, San Antonio, Texas. He's thirty-seven years of age. His education includes a BA and MA degrees from St. Mary's University and a Ph.D degree in the field of political science from the University of Arizona. He is married and has two children. He is employed as a professor of political science at St. Mary's University, San Antonio, Texas. He's been teaching at the university level, both undergraduate and graduate, for approximately sixteen years. Is that a correct statement, Dr. Cotrell? A That's correct, Mr. Menefee.

THE COURT: You offer him as an expert in what area?

MR. MENEFEE: The field of political science, Your Honor.

THE COURT: Political Science?

MR. MENEFEE: Yes, sir.

THE COURT: Does anyone wish to interrogate respecting qualifications?

MR. CARR: No, Your Honor.

[4] MR. MENEFEE: Your Honor, I would like to put in some additional information about his background.

THE COURT: Excuse me, I thought you had finished.

Q Dr. Cotrell, would you please tell us what professional organizations you're a member of. A I'm a member of the American Political Science Association. I'm also a member of the Southwestern Political Science Association. I'm a member of the American Society of Public Administrators.

Q Would you give us a brief description of your publications and convention papers, please, sir. A Yes. I'll spare the court the convention papers. There are some fifteen of those. Publications include articles for example in *Publius,* the *Journal of American Federalism,* on the Voting Rights Act and Local Standards of Representation; monographs on municipal services equalization published by the Department of Urban Studies of St. Mary's University, and the effects of at large elections on blacks and Mexican-American voters in Texas, published in government publications, among other things.

Q Okay, sir, would you tell us very briefly what research grants or fellowships you've been the recipient of. A Yes. I've received grants from the National [4] Science Foundation. I've received a grant from the John Hay Whitney Foundation of New York to research political access and governmental services in four Southwestern cities that ran for four years. I have also received grants to conduct videotape interviews of Southwestern political figures as well as Latin-American political figures in 1976 and 1977.

Q Would you briefly describe the courses that you teach at the university. A I teach courses in public administration, in American political thought and other courses in political theory, and I also teach courses in political attitudes and voting behavior.

Q On this basis we ask the court to accept Dr. Cotrell as an expert in the field of political science.

THE COURT: You don't wish to inquire?

MR. CARR: That is correct, Your Honor.

THE COURT: You may proceed.

Q Dr. Cotrell is your fee for working on behalf of plaintiffs in this case contingent on the outcome of the case?
A No, it is not.

Q When were you first contacted by Mr. Blacksher and myself? A I was contacted in January; January or February of 1977.

[5] Q Okay, sir. What did we ask you to study? A You asked me to examine the impact of the at large election systems in Pensacola and in Escambia County, in the school district races and also in the County Commission, on the access of black voters.

Q Okay, sir.

THE COURT: The School Board and County Commission? A Yes, Your Honor.

THE COURT: Well, those were the two? A Pensacola, City of Penscola, and the County Commission and the School Board.

THE COURT: Oh, I see. All right, sir. A Yes.

Q Dr. Cotrell, have you been a witness in other litigation similar to this? A Yes, I have.

Q Dr. Cotrell, would you please tell us how you went about preparing your study. What sources did you con-

sult? A I began studying the Pensacola and Escambia County electoral system first by coming over here on, I suppose, five or six different occasions from the period '77 through '78. I asked for raw vote returns and have examined the raw vote returns for numerous elections in the city, the county and the school district. I have asked [6] for and examined the regression analyses run on the city and the school district and the county, those analyses now in evidence before this court. I examined for background material newspapers, any kind of printed material that I would find on Escambia County, some on Florida and the South, and also I conducted interviews with some twenty to twenty-five persons as background. They were informal interviews attempting to learn more about the politics and the dynamics of elections in the city and the county and the school district.

Q Okay, sir. A I also, I might say, did spend some time actually, as it were, driving and walking the county and the city itself.

Q Okay, sir. And have you been present through the trial of the case? A And I've been present through the testimony in this trial up to this time.

Q Okay, sir. You mentioned newspapers. Over what period of time have you reviewed newspaper articles? A Roughly 1955 to 1978. The brunt of that analysis, however, has been in more recent years.

Q Dr. Cotrell, I would like to ask you to first help us understand two terms, to give us a definition, if you will, please, sir, of first what is a [7] polarized vote? What does it mean to you as a professional? A. A polarized vote is a voting situation or a dynamic wherein two recognizable groups vote differently and usually over time on candidates or issues. That's what a

racial, a polarized vote means. It could be based on race or based on something else.

Q Okay, sir, you mentioned a time factor, over a period of time. What sort of period of time do you need to study to make such a judgment? A Well, it's my opinion that you would want to take a fifteen to twenty year period, longer if possible, and examine the patterns, voting patterns, over that period of time.

Q The next term I wish you would address, Dr. Cotrell, is vote dilution. A Vote dilution is a term which means that the voting preference of a group, a cognizable group, has been submerged or thwarted or canceled in the context of, it's usually used in the context of racially polarized voting. That's the way I've heard it. And in the context of racially polarized voting dilution means that the voting preferences of one group are thwarted over time by the voting preferences of another group.

Q Okay, sir. This time factor that you referred to, would that be similar to the one, the same time span [8] you mentioned in relation to the polarized vote definition? A Well, I think, if I understand your question correctly, before one would reach a judgment concerning dilution you would want to look at the phenomenon over time. You would not want to isolate the one race or two races or a small, a very short span of time.

THE COURT: Doctor, let me interrupt. On your dilution, it does not include the factor of some form of official action on the part of the state or the county or the city that either purposely or has the effect of dilution? That's not a factor in your definition of dilution? A That's correct, Your Honor.

THE COURT: Your definition doesn't get into that? A My definition of dilution really deals with voter preferences being submerged.

THE COURT: I understand what you said, yes, sir, and that's the reason you tied it to polarization as a factor in it that shows it consistently over a period of time, because one race has more political votes than the other; the other group is simply not, doesn't get anybody elected and that kind of thing. A That is correct, Your Honor.

THE COURT: And you don't take in that other factor. I didn't think I heard it. Go ahead, sir.

[9] Q Dr. Cotrell, is this dynamic of vote dilution associated at times with at large election systems? A Yes. The notion of dilution in behavior and in law, I think, has been examined principally in the context or situation of at large elections. What happens in an at large election structure or electoral system, if you have the existence of racially polarized voting, it is possible over time for the at large structure to amplify the preferences of one voting majority over time, thereby canceling or diluting or thwarting the voting preferences of another group over time.

Q I see, sir. A And this is the effect of dilution in an at large structure.

Q Dr. Cotrell, have you formed an opinion on whether or not the vote of black citizens in Escambia County and Pensacola is diluted in the three jurisdictions we asked you to study? A Yes, I have. I've formed the opinion that racially polarized voting exists in the City of Pensacola, in the School Board, school district, and in Escambia County.

Q Okay, sir. A And also I reached the conclusion that dilution exists also in those three jurisdictions.

[10] Q Okay, sir. Dr. Cotrell, would you please address each of those jurisdictions separately and tell us what the basis of your opinion is for each one. Perhaps, shall we start with the county? A I was, well, I was - it's fine if you want to start with the county. I was going to start with the city.

Q The city, okay, sir. A Yes.

THE COURT: It suits you, doesn't it, Counselor? Go ahead.

THE COURT: MENEFEE: Yes, sir.

THE COURT: Go ahead with it the way you have it set up. Start with the city.

Q If you'll start with the city, Dr. Cotrell. A I examined, to reach my opinion I examined the regression analyses and for the city those included a great number. They included all races wherein blacks ran. I think there were some twenty races and eleven black candidates. It also included all winners in city elections in the period, in the seventies, the decade of the seventies, and it also included a random selection of winning elections or winners, rather, during the decade of the sixties, excluding, of course, in this sample, the black, the cases wherein blacks were candidates for office which had already been covered previously. I also examined raw voting returns [11] and attempted through background interview sources to learn as much as I could about the City of Pensacola and its politics and the electoral dynamics here. I found in the regression analyses that consistently the phenomenon of racially polarized voting existed. It existed at a point higher than the statistical .50 "r" squared, which means

that half of the variance in the dependent variable that the candidate receives is explained by the factor of race. But that wasn't enough. You have to look at raw vote returns. You see, before you could reach a conclusion of dilution you would have to, of course, have extant racially polarized voting but you would also have to have evidence of a submergence or a canceling of the voting preferences of, in this case, the black citizens of Pensacola. And so to do that I supplemented the regression analyses, and if the court would permit I would like to summarize some of that raw vote analysis, and this is what I did. I looked at 95 percent white-registered voter precincts in the city. They range from, in number, of, twelve to fifteen. And I looked at 95 percent black voting precincts, black-registered voter precincts in the city, and I attempted to see if in fact in these highly concentrated areas if we had a situation where consistently and over time blacks were voting one way and whites were voting another. And also I looked at the number of people who were elected to [12] office. I found that looking at the seventies in this analysis, for example, in 1971 in the city my records show that four blacks, Mr. Bill Marshall, Mr. W. F. Hendrieth, Mr. Henderson and Mr. Hollice Williams, ran for office. And looking at those -

THE COURT: This is all in 1971? A Nineteen seventy-one, Your Honor. No, this is not. It goes on through to '77, Your Honor.

THE COURT: That's what I was thinking. You start with '71. A If you want me to summarize this entire thing quickly.

THE COURT: No, you referred to 1971. You just confused me. A That is this race, and I could go -

THE COURT: Well, you just go on. A I want to give the court the idea.

THE COURT: I just misunderstood your testimony. I thought you were saying there were four blacks that ran in 1971 and I didn't remember that. Were there four blacks that ran in 1971? A Well, I think that Mr. Marshall, Hendrieth, Henderson and Williams did, yes, sir.

THE COURT: All four of these ran in 1971? A Yes.

[13] THE COURT: But that was not in the city race. A Yes, sir.

THE COURT: It was in the city race?

MR. MENEFEE: Yes, sir.

THE COURT: I'm sorry I stopped you. You go right ahead. A Yes, sir. I found that there were twelve ninety-five and above registered white voter precincts. This gives you a really good idea because there are very few black voters in those precincts. It gives you a very good idea about how the white voters in these residentially concentrated precincts are voting and viewing the black candidate, and I found in '71 that Mr. Marshall, Mr. Hendrieth and Mr. Henderson carried absolutely none of those. By carrying I mean 50 percent. I found furthermore that in that year those precincts alone, those twelve alone constituted 42 percent of the total vote cast in the election. And I found that the only black candidate who scored appreciably well in those precincts was Mr. Hollice Williams and he carried eleven of them.

Q Eleven of the - A Eleven of the twelve, yes.

Q Okay, sir. A I found that with an exception of Mr. Henderson that the black precincts, the 95 percent

registered black [14] precincts, scored for, voted for the black candidate at a range of from 65 to 77 percent. Henderson received a near majority but not a majority in that case. Then I looked at the next elections, which were '75, where blacks were running opposed. Obviously if they're running unopposed it doesn't affect this analysis. And I found in '75 that we had two blacks running for office, Mr. Hollice -I'm sorry, three blacks: Mr. Hollice Williams; Mr. Brewer, who testified yesterday; and Mr., Dr. Donald Spence. And we found that Mr. Brewer carried none of the fifteen precincts, found that Mr. Williams carried thirteen of the fifteen precincts, and that Mr. Spence carried six of the fifteen precincts. The ranges of support for Mr. Spence, Brewer and Williams ranged from 71 to 97 percent in the black precincts. Now I would like to add here also we have correlations, "r" squares.

THE COURT: The range in the black precincts, will you give me that. A Oh, yes, sir. They ranged from 71 to 97 percent for the black candidates. Brewer received the lowest, 71. Dr. Spence received 97 percent. Mr. Hollice Williams, 96 percent. Then in 1977 there were two candidates, my records show, Mr. W. F. Hendrieth again and Mrs. Ruby Gainer, and there were fourteen of the oh, I forgot one thing on '75, that in '75, 50 percent of the [15] vote in the total votes cast was a product of those, at that time, fifteen precincts.

Q The white precincts? A White precincts, right. Then in '77 I found that Mrs. Gainer carried one of the ten fourteen white-registered precincts while carrying 93 percent of the black precincts, that were 95 percent or better registered black voters. Mr. Hendrieth carried none of the fourteen white precincts and carried a majority of 54 percent of the black precincts. I had to examine these data

closely because obviously when you have the election of a black candidate then you've, it's difficult to allege that there's dilution because the preference of the blacks, there may be polarization but the preference of the black community and enough of the white community is elected, and what is striking here is the fact that the only people who have really, the only person who's ever carried all of the, I'm sorry, a majority of the white precincts, has been Mr. Hollice Williams. And the only other person who is even on the scoreboard, that is, carrying six of fifteen white precincts in 1975, is Dr. Donald Spence. And although one could not say that there is dilution in the Spence and in the Williams elections one could say and has to say that certainly the fact that these two individuals were the only two introduced into the political system, into election, by [16] an all-white Council, would have in impact.

Q Dr. Cotrell, while you're there would you please explain what significance being introduced by, I think you said all-white City Council, what significance is that to you on your opinion? A Voters -

MR. CATON: Your Honor, if I could interpose an objection here, at the time Dr. Spence was introduced into the City Council, appointed to the City Council, he was not appointed by an all-white Council. Hollice Williams was a member.

THE COURT: He did not say he was appointed by the Council. He said introduced into it by an all-white Council. A Yes, I understand the distinction and I meant introduced, Your Honor, instead of voted on by then Hollice Williams in '73. I appreciate the distinction.

Q Dr. Cotrell, when you say introduced, is that synonymous with being appointed to office? A Well, I

mean you're appointed and these precincts which in the city in the seventies, again nearly all white, overwhelmingly voted against black candidates, apparently took cues in these instances and voted with the black precincts. Then I think I gave the court the '77 statistics. And I would point in 1977 60 percent of the [17] total votes cast in the city came from the then fourteen predominantly white precincts.

THE COURT: You say 60 percent? A Sixty percent, Your Honor. So we can see a couple of things from this analysis and it influenced me along with the regressions in reaching my conclusion concerning dilution. We can see that a preponderant vote in city elections is coming from the preponderantly white-registered precincts, and we can also see that these precincts, a majority of the time, to not vote at all with black candidates. Some of the time they vote, well, a black candidate can carry one or a black candidate can carry maybe six of fifteen, but the only person, Mr. Hollice Williams, who has carried a majority of these precincts and better, has been Mr. Hollice Williams.

Q I see, sir.

THE COURT: Are you about to finish on the city part of it? A On the city, yes, sir.

THE COURT: I was wondering. It's about time to take a break. If he's at the conclusion perhaps we ought to take about a ten or fifteen minute break. You'll be on the stand for, you'll have him, he'll be with us another thirty or forty minutes, at least, I'm sure.

MR. MENEFEE: We have a few more questions, Your Honor, [18] yes, sir. Yes, sir; I'm sorry.

THE COURT: We're going through the county and other things. What was it, Doctor? A Should I leave this stuff up here?

THE COURT: It will be perfectly all right. We'll take about a ten or fifteen minute recess.

(Recess)

DIRECT EXAMINATION RESUMED

BY MR. MENEFEE:

Q Dr. Cotrell, we were discussing the basis of your opinion as to the judgment you reached on this city government, City of Pensacola elections, and you mentioned previously the factor of the City Council approving or appointing Mr. Hollice Williams and Mr. Spence, Dr. Spence, and you used the term it was a cue. What do you mean? What effect from the standpoint of behavioral science does this type of approval have? A There are a group of political scientists and social scientists, I think who would have us believe that the electorates are fundamentally not very responsible, not very intelligent. That isn't my point of view. But we also, when we judge intelligence of electorates, have to look at, distinguished between general symbols which they recognize, and specifics.

Q Such as? [19] A Well, if you ask the electorate at any given time what the President or the Mayor's position is on March 23rd, on this position, you might be disappointed. But V. O. Key, Jr., a venerable political scientist, wrote a book just at his death, *The Responsible Electorate*, where he tried to show over a long period of time electorates are aware.

THE COURT: They are what? A They are aware.

THE COURT: All right, go ahead. A And what I mean by cue is that leadership, visible leadership in the community, political leadership, of course, we're speaking of that in this case, socio-economic leadership, of course, visible people in the community, people who have in-

fluence in the community, by their actions and by their endorsements and by their policies can tell voters, not tell voters but can give voters cues, directions and leanings. When I look at these statistics, I look at Mr. Williams, Henderson, Hendrieth and Marshall in 1971 and I have to ask why did Mr. Williams receive, win eleven of these predominantly white-registered precincts and the other blacks none. I have to ask that question, and one very plausible explanation to me is the fact that, unlike the other three, Mr. Williams was introduced by, in Mr. Williams' case, an all-white Council, and there is a degree [20] of acceptability associated with him that might distinguish in independence and so on from the other three black candidates. That's what I mean.

Q Thank you. Now, Dr. Cotrell, would you please turn your attention to the next jurisdiction and tell us what was the basis. Does that conclude your basis of your opinion as to the city? A Well, of course entering in all of these opinions are the testimony I've heard there, but also the interviews, the informal interviews, but those are principal bases of the opinion, yes.

Q Okay, would you turn your attention to the next jurisdiction. A To the school district.

Q Okay, sir. A The School Board elections.

Q What was your basis for your opinion as to the School Board? A In the School Board cases I think I have on record the number of elections that were studies, but fundamentally all races wherein blacks ran and all races in the decade of the sixties and the seventies wherein there were winners.

Q You're referring to the regression analyses? A The regression analyses, of course, were [21] run on all

of those races, so we have "r" squares or race as a factor, influential factor, predominant factor, in -

THE COURT: You used the same approach here as you did in the city? A Exactly, Your Honor.

THE COURT: And that would be true when you get to the School Board? A That is correct.

THE COURT: All right, sir, go ahead. I mean the County Commissioners, because you are now on the School Board. A Yes, sir.

THE COURT: The same approach all the way through, is what you're telling us. A Yes, sir.

THE COURT: All right, sir, go ahead and tell us. A I found racial polarization, but as I told you earlier, racial polarization doesn't always mean dilution. I found in the School Board races then, using the same kind of analysis except for the wider Escambia County, that is, the predominantly white-registered, predominantly black-registered precincts, I found that in 1974 where Mr. Elmer Jenkins ran in the School Board race that there were sixty-nine predominantly white precincts and he was able to carry nine of those at a majority. Those precincts cast out [22] of a hundred, I think a hundred-twelve or hundred-fourteen total precincts 64.5 percent of the vote, total votes cast. I found further that Mr. Jenkins was able to carry the black precincts, 95 percent black-registered and above, 96 percent. I found in the general election that year - again, Mr. Jenkins won the primary.

THE COURT: This was the primary? A This was the primary, Your Honor, and the general election he won.

THE COURT: Wait a minute. A The primary, and now we're going to the general election.

THE COURT: Who was his opponent in the primary? A His opponent in the primary was Sanders, I think.

THE COURT: He was a white man, black man? A He was a white man.

THE COURT: And he carried this even though he only carried nine of the sixty-nine? A He carried nine of the sixty-nine and won in a very close race, yes.

THE COURT: How could that be? There wasn't polarization; there had to be some crossover. A Yes, he had some crossover. In fact, Your Honor, the notion of racial dilution takes into account [23] crossover. I mean there has to, there's no suggestion -

THE COURT: Well, in this particular race this is evidence that polarization was not effective, that it was not there, that there was crossover voting sufficient to allow him to win the nomination. A Yes, sir.

THE COURT: Is that right? A Not in, I don't think at all in those precincts but he gathered enough votes in the rest of the city to do it in a very close election in the Democratic primary, yes, and what I'm saying, Your Honor, is that it's being offered into evidence because it is the overall pattern of those predominantly white and black precincts we're looking at that you make your judgment on.

THE COURT: You have to take in, when you get through with all these things, you have to take into account, as you're doing, the results obtained. A Whether he won or not, and he won in the Democratic primary.

THE COURT: He obviously had to have some white crossover votes. A Oh, undoubtedly, he had to have.

THE COURT: So when you talk about somebody voting by race, there were undoubtedly a good many white people in that race voting not by race but for the candidate.

[24] A That's clear.

THE COURT: All right. A That's clear. However, it doesn't disturb the pattern of the predominantly white precincts and the way they go in this election. They did cast a significant portion of the vote. In the general election Mr. Jenkins, this was against a Republican, Mr. Jenkins carried four of sixty-nine of the predominantly white precincts and 94 percent of the black precincts that were predominantly -

THE COURT: He carried only four of those predominantly white precincts in the general election? A And lost to a Republican, Your Honor. Then in 1976, the School Board race, this must be, yes, it's the primary, Mr. Jenkins carried none of the then sixty-three predominantly white precincts. They in turn accounted for 61 percent of the total vote cast, and he carried 93 percent of the predominantly black wards or precincts. And finally in primary one Dr. Spence, who was an incumbent on the School Board at that time, carried none of the predominantly white-registered precincts. Those precincts, those sixty-three, accounted for 72.6 percent of the vote, total vote cast. And Dr. Spence carried 93 percent of the black precincts. And finally in the School Board runoff, 1976, Your Honor, Dr. Spence lost that runoff by twenty-nine to nineteen thousand.

[25] THE COURT: But the vote in the primary was sufficient to put him in there notwithstanding the fact he car-

ried none of the white precincts? A No, he was able to get in the runoff.

THE COURT: No, he was in the primary one, wasn't he? A He got about fifteen thousand votes, Your Honor.

THE COURT: Did he lose in the primary or general election? A He lost in the runoff in the primary.

THE COURT: He lost in the runoff in the primary? A Yes.

THE COURT: He had enough votes in the first run? A There were three candidates, sixteen, fifteen and ten thousand distribution, roughly. He lost the runoff. He carried none of the sixty-three white precincts and he carried 98 percent of the predominantly black precincts. On that basis and on the basis that racially polarized voting exists in the School Board elections I have concluded that there is racial dilution of the vote in School Board races in Escambia County.

THE COURT: Let me ask you one thing about that. There was another candidate in that race who was on the School Board and who was running. [26] A Carl West.

THE COURT: And was also defeated. A Yes.

THE COURT: How did you compare his figures with Dr. Spence's? A I did not. I knew that he didn't get to the runoff.

THE COURT: You mean Mr. West didn't get to the runoff? A Yes. He carried approximately five or six thousands votes and he ran poorly, in other words.

THE COURT: Yes, but you stopped right there; you didn't compare it to see if there might be another reason

other than polarization, another factor entering in that particular election? You didn't go into that? A I, well, I eyeballed it, Your Honor, and that is not good enough for the record for this kind of a summary. I could find, Mr. West didn't, in these precincts -

THE COURT: White and black? A Well, the white precincts. Mr. West did not, I saw no discernible pattern by eyeballing; in other words a lopsided vote one way or the other.

THE COURT: He didn't take any of the white precincts, did he? A I don't think he carried any.

[27] THE COURT: You see, we have a particular situation. There's been some testimony about some things going on in the School Board before and that's the reason I was interested in seeing whether this might have been another situation that you haven't examined here that was in effect. I just wondered but what Dr. Spence may have gotten a total number, greater total number of votes than did the white man in this race. But you haven't gone into that? A I did not go into the West race other than what I indicated to you, yes, sir.

Q Dr. Cotrell, you did in the course, did you in the course of your interviews obtain information about problems relating to the School Board during the issues that were raised during that period of time?

THE COURT: I'm sorry.

Q I was asking Dr. Cotrell, part of Dr. Cotrell's research was through interviews in the community.

THE COURT: I see. A And I just wanted to ask Dr. Cotrell if that type of, that part of his research gave him some background as to the problems affecting the School Board at that time. A Well, of course -

THE COURT: He says he didn't consider it so I don't know it makes much difference, Counselor. He hasn't [28] gone into it. That's what I understood. He didn't go into these results to see if there were other factors that might have produced the vote. Isn't that what you said? A Well, I did the interviews, Your Honor. I have a background about a little about what that election contained in terms of issues and so on.

THE COURT: Did you get a basis for opinion from the interviews respecting it? A Well, my interviews revealed that the Rebel flag incident which has been much in discussion in the testimony in this court did racially tinge the air, the election. Indeed, when you raise the notion of a Rebel flag itself, I think you're talking about a symbol that can evoke a racial response. Yes, I considered that interview data. I'm going to the principal sources of my conclusion.

THE COURT: Well, do you have any opinion as to how it affected the race, elections, of these two men, these two people? A I think that in the case of, I can say in the case of Dr. Spence that School Board politics at that time were, the electorate was racially tinged, and his being black, his being as successful as he had been, yes, it would account in part for his defeat.

THE COURT: What about Mr. West? A I don't have an opinion on Mr. West. He was [29] an incumbent and I don't think that I got a pattern one way or the other on him.

THE COURT: Well, if race was in it, it seems to me that the converse, if race was there and it was defeating a black man, it should have helped the white man, both being incumbents. A Well, I don't know, Your Honor. The only thing, I wasn't able to determine whether Mr.

West rose as a visible spokesperson for the black community, as Dr. Spence is and was.

THE COURT: Well, he was a white person. A Yes, he was a white person.

THE COURT: Was he a visible spokesman for the white community? A Well, no, for black interests. I wasn't able to determine that. In other words if it could be determined that Mr. West was a visible spokesperson for the white interests or for black interests then I think that he might have had the kiss of death; the electorate would have swept him out of office.

THE COURT: But you would have to make that assumption; you can't A I don't know what is, I did not hear in my interviews that Mr. West was a spokesman.

THE COURT: You really didn't go into that situation. [30] We're right back into that. A Yes, sir.

THE COURT: All right, sir, go ahead. A And when the county -

Q Was there anything further on the School Board, the basis of your opinion as to the judgment you reached as to the School Board, or is that the conclusion? A That concludes it.

Q Okay, sir, now would you turn your attention to the county. A In the county I found in the, I think there were four races wherein blacks ran I found racially polarized voting meeting the statistical criterion, .50 "r" squared. I found a dearth of candidates, few candidates running, and I found some discouragement among blacks based on the interview data. I found some discouragement and based on testimony in this courtroom concerning a willingness to participate in county politics, or elections, I should say.

Q This is the first time you've mentioned the dearth of candidates. What do you attribute that to? A Well, as you know, there have been situations where in at-large election structures where no, the test of racial polarization in a sense can't be made because there are no black candidates or, indeed, a white candidate visibly identified with the black community, who [31] have run. And in that kind of situation you, to reach a conclusion of dilution you have to examine the full panorama of the election system and one of that, one of those indicators is the willingness, having a significant portion of the voters, one out of five of the voters in the election system of your race, anyway, the willingness of candidates to run.

Q Do you have an opinion why blacks haven't run recently? A Well, I think there is a discouragement. They feel it's futile to run. I think that the testimony in this courtroom reflects that, but more importantly or equally importantly to me, uniformly the black interview respondents indicated that, and then the actual statistics of people who have run indicate that. The last person to run, I think, was Mr. Dedmond in 1970, run for election. So, Mr. Menefee, what I'm suggesting is that any situation where you don't have, as a word, that many tests, we do have four and they indicate racial polarization, but nevertheless in these situations where you don't have that many tests you want to look at factors such as this because if candidates feel that it is not worth their while to offer themselves for election then in a sense this voter preference I spoke of is short-circuited before it even begins. That is, voters have no, they have no necessary preference if candidates of [32] their persuasion or race aren't offering themselves for office because of a feeling of futility.

Q All right, Dr. Cotrell, were there any other factors that you wanted to mention that constitute the basis of

your opinion as to the County Commission? A Well, I think I mentioned the regression analyses. I mentioned the interview data, discouragement factors, and the number of candidates. As much as I can recall at this time that's the basis of my opinion.

Q Dr. Cotrell, going on to a slightly different area, in this type of study that you conducted in Pensacola and Escambia County, is this consistent with methodology that you've used in other areas? And if so, would you explain about your methodology. A. If your question, Counselor, is, "Is this methodology similar to the other at-large jurisdictions I've been asked to examine," Yes, it is. It involves election analyses, it involves interviews, it involves ultimately a judgment concerning the effect that a particular electoral structure, the at-large structure, has on the preferences, voting preferences, of different groups.

Q Dr. Cotrell, Is there any, are there any factors that are particularly noteworthy about the study here as to what you've seen in other jurisdictions? A Well, these cases are becoming monuments of [33] evidence. I have some experience beginning, of course, with the early cases. The evidentiary basis is really strong and of course there were a hundred fifty regressions run. I have never been in a situation where that many regressions have been run on one locality.

THE COURT: You mean a hundred fifty were run here? A Were run here in Pensacola, and that's an extraordinary amount in the terms of methodology that's been employed. That's not to say in other areas that you don't run regressions and election analyses and look at as many races and factors as you can but I am saying that this is an extraordinary amount of analyses here.

THE COURT: Is that good or bad? A Well, I think it's a good thing if you want to reach a sound judgment.

THE COURT: All right, sir. Okay, sir. Dr. Cotrell, would you briefly address yourself to the helpfulness of the scatter diagrams, for example. A This, yes, the scatter diagrams I have used myself before in my research in directing master's these and so on. They are, to me they're a marvel. They tell a story by simply looking at them. You just can't escape the conclusion of polarization or nonpolarization from those diagrams. I'm not talking about dlution now; [34] I'm talking about polarization. From those diagrams. They're just irrefutable. And this in, well, in my experience this is the first time in a case that the scatter diagrams have been employed and I think they're a definite improvement.

THE COURT: You mean to your knowledge this is the first time they've been employed? A To my knowledge, that's true. Regression analyses, no, Your Honor, but scatter diagrams, yes. This is a further refinement of that technique, and again if the old proverb, "Every picture tells a story," means anything it means something in the case of those scatter diagrams and the phenomenon of racial polarization.

Q Dr. Cotrell, have you studied voter turnout in connection with your investigation in Pensacola and Escambia County? A Yes. I have looked at figures on voter turnout in the School Board and, well, the county and city.

Q All right, sir. Do you have any opinion as to the turnout of black voters in Escambia County and the City of Pensacola, and if so, would you express that? A Yes. Blacks tend to have a lower voter turnout in almost, well,

in all jurisdictions, city and county and school district, save in one instance, and that is when a black candidate is running and then the black turnout either equals in, say, select wards, predominantly white or black [35] wards, either equals or exceeds the white turnout. One interpretation, well, if you came into a situation that had no kind of a racial polarization in it, no kind of racial tinge in the electorate, well, you wouldn't expect to find that. You wouldn't expect to find uniformly blacks turning out equal to or better than another cognizable group; that is almost without exception. One thing, one explanation of that could be that blacks obviously strongly identify with black candidates who, at least interview sources say, I think it's common sense tells us, they feel they can represent black interests. Certainly we have had testimony here to that effect. And that at least of the whites running, at least of the whites running that blacks in Escambia County and Pensacola, judging the turnout stats, statistics, I'm sorry, feel that of those who ran they wouldn't be that well represented. There wasn't enough interest to turn out at a high rate for those whites running. We can conclude that. So in a sense I guess you could say that blacks, the inference from this could be that blacks feel that the, as represented by white candidates who have run, that they're not that encouraged or interested in participating in a system that apparently has, for them, has few rewards.

Q I see, sir. You earlier mentioned in connection with candidate recruitment or candidates offering themselves for office the discouragement factor. Does the [36] discouragement factor apply in the context of voter turnout, is that similar to this phenomenon you're discussing of the lesser black voting percentage when only white candidates are offering themselves? A Let's go back to this, Mr. Menefee. I understand your question. Let's go back to this

view that the voters are not as dumb as people would like to think. I don't think that voters are that ignorant. It seems to me that when a body of citizens feel that their vote or their participation generally is not going to result in a gaining of their act of voting, their preference, their mandate, if you wish, and this occurs time and time again, and then built on this is a, blacks in the South and in the Southwest, Mexican-Americans too, you have some shadow of history affecting participation rates. With these two things combined it's not unreasonable to find this, well, kind of ironical situation where blacks equal the turnout or better the turnout of whites when blacks run but then they appear to be, to have lower, at least the appearance of lower turnouts and so on, they appear to be indifferent or whatever to white candidates who are running; they appear to be indifferent in that sense to the system.

Q Okay, sir. A That's not an unusual explanation to me.

Q Yes, sir. Dr. Cotrell, I think you've [37] touched on it briefly in describing the basis of your conclusion for the County Commission. Would you address in a broader sense the problem of candidate recruitment in the black community, if you've studied that. A Yes, I have. There have been, I believe, twenty-seven, twenty-seven or twenty-eight black candidates over the period basically 1955 to 1977. I'll give or take a black candidate there on the twenty-five or twenty-seven, during the period '55 to '77. In all these jurisdictions. And there have been some approximately five hundred forty white candidates. Now, I'm not trying to get in any kind of, "The population basis is this for the blacks and therefore they ought to have that many people running." That's not what I'm talking about,

but I am talking about a reasonable assumption that when you have 33 percent of the population that is of one race and these people are citizens and have interests lke any other citizens, demands and aspirations and hopes and so on like any other citizen, that you would, you could expect more people to run for office.

Q Okay, sir. A Now, that many out of five hundred thirty-eight over that period is just, well, it's just not that impressive.

Q Okay, sir. A I would like to add one thing, Mr. Menefee, [38] if I might, to a previous question, and it's simply something that I know this is an adversary proceeding but I feel it should be said. When I spoke of discouragement factor and I talked about peculiar situation of blacks, I think there is historical and some current basis for that, vis-a-vis blacks. But that is not to say that white citizens or brown citizens or red citizens or whatever kind of citizens, that is not to say that these, those citizens, don't also experience some of the same frustrations and sometimes lack of reception and response and so on, as black citizens. But what we are speaking of here is a question of degree.

Q Okay, sir, this frustration experienced by other citizens, let's direct your attention to the white electorate. You've heard comment in the courtroom, I assume, from the witnesses and the bench about low voter turnout in elections. Is this consistent and in line with the point you just made? Is that part of the discouragement or apathy factor? A Well, if your question is does the futility, electoral futility for blacks as expressed here and in interviews, as expressed by statistics in terms of recruitment of candidates, if that futility is a response to their view that they

couldn't possibly win or it wouldn't do much good to run, yes. But I want to make, I want to make this point. What's at issue here is a system. The crossover votes, and [39] they occur and I'm happy they occur, I know there are a lot of other people who are happy that crossover votes occur, the crossover votes show that some people are voting apparently on bases other than race. But what is at issue here is a systemic or system effect. We're talking about a peculiar situation, not that Pensacola or Escambia County is peculiar; I'm talking about the election system. The at-large structure has a tendency anyway to amplify the winning majority and if you place on that structure conclusive evidence of racially polarized voting and then add to it the factors we talked about, and we need not go back through it here, add to it this context where people are shut out, what you have is a systemic effect. It is the effect of a system and in my understanding that's really what I was asked to research and that's what these lawsuits are about.

Q Okay, thank you, Doctor. Dr. Cotrell, from your professional opinion and background would you address the question of the importance of having a black officeholder. What are the various factors that enter into the signifance of blacks holding public office? A That's to me a very important question. I think that the literature in political science would suggest there are two general things that an elected official can do. His or her presence, black, white, brown, red or whatever, has a, can have a symbolic effect in the electorate. Symbolic. [40] And of course what they do actually is also a function of their being in office, what they do in terms of citizen demands and so on, what they actually do. Well, let's take the first portion first, the symbolic effects. Obviously it seems to me that it's just plain, common sense that a black in office is a

symbolic, has symbolic meaning to a black community. There's been much testimony here about the actual performance of two blacks, for example, who sat or are sitting on the City Council, but I don't think anyone's going to deny the symbolic effect.

Q Explain some more. What do you mean, symbolic? A Yes, I want to.

Q Who is it symbolic to? A When you interview people, interview older people, and you ask them, here and elsewhere, you ask them, "Why do you run for office, Mister," it's unimportant who, it's another jurisdiction, another situation altogether, a sixty-three year old man who'd been a model citizen all of his life; he knew he could not win in that situation. It was impossible. It was impossible for a lot of reasons. He said, "I ran so that the younger people could see what it means to stand up and exercise your citizenship rights and, I think, obligation to seek to carry out your point of view at the hands of the electorate," and so on. That's one of the symbolic meanings. A second one would be obviously, maybe not so obviously, but blacks or whites, there is, there are cultural differences, and one of the symbolic effects has been shown in some instances to be that blacks would seek out other blacks for the demands, requests, grievances, initiation of policies and so on, and of course, turning to actual effects, the actual benefits of being in office, well, I don't, I don't want to take that much time. You have a person on the inside making the decisions from the respective point of view of a community or a group in a community, carrying out that point of view, making the decisions themselves. And also, I guess you turn the coin, you have someone on the inside, not on the outside feeling excluded.

Q Dr. Cotrell, backing up, I think one idea, you mentioned the symbolic representative serving the function of receiving requests. Do you mean beyond their actual jurisdiction, or where are you, I don't understand; what do you mean, receiving requests? All officeholders receive requests. A Well, you know, the court is going to have to judge the testimony presented here but there was a witness yesterday who, this is not uncommon, who spoke of, a black witness, Mr. Hunter, I think it was, the Human Relations Commission member, who spoke about receiving black requests all over the city and all over, all over, and this [42] is not infrequent with a minority legislator, be it Council-person or School Board member or state legislator. There are cultural factors involved and in some instances language factors. I'm not suggesting that here but I am in other areas.

Q So the system of single member districts for example, if one of the single member districts elected a black representative are you saying that blacks other than in that district would likely or possibly use that black representative as a funnel for their requests? Is that the type of situation? A Well, yes. I mean that's obvious.

Q Okay, sir. A You don't want to, you don't want to take away from the symbolic effects of having someone who a citizen identifies with up there successful. That's important. That's important to make this system run.

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[56] Q Doctor, let me ask you if you agree with a statement. The statement is, "The real question when investigating whether black political strength is diluted is [57] whether the racially polarized voting patterns

yield a large enough white vote for black candidates so that when added to black votes that amounts to an overall majority." A If you would add the phrase, "Contextually over time." That is, that judgment is made over a period of time; if it's not isolated to one election.

Q So in other words what we're talking about is whether black candidates are elected? In your view that's the essence of dilution? A No. These cases, Mr. Carr, are cases of voter preference and elections obviously, as I, my earlier testimony reflects, when you have a black elected to office you have a correspondence between the preference of black voters and if there's racially polarized voting, and a number of white voters, and it's not dilution. But winning an election alone is not the only question. The question is over time whether in a studied judgment voter preferences are submerged in a number of instances in the context of racially polarized voting.

Q I'm not sure I understand the difference, and back to my original statement, it seems like there's a bit of inconsistency there. I asked for your agreement as to whether it was true that the sine qua non of dilution is whether the racially polarized voting patterns yield a large enough white vote for black candidates that when added

[58] to the amount of black votes amounts to an overall majority. Isn't that the same as electability? A Mr. Carr, I don't want to play cat and mouse with you. What you're saying is you put all that together and whether or not the person is elected. I mean if the black votes and enough white votes make a majority and it's the majority system you're talking about for election.

Q Okay. A And I said that election alone is an indicator, of course; it has to be.

Q What else is there? A Well, my earlier testimony just reflected that. The question, "What else is there," is the issue of whether or not the voter preferences over time have been diluted in the context of facially polarized voting and whether after a studied judgment over time you find that to be the case.

Q Well, then it's enough, it's sufficient to constitute dilution then if these three factors are present: one, an at-large electoral structure; two, the minority status of blacks; and, three, enough racially polarized voting so that blacks may not get elected over time? A Well, you left out all of the judgmental factors on dilution.

[59] Q Okay. Let me ask you then how you evaluate the question of the performance of the government, which bears certainly on whether or not preferences are submerged over time.

THE COURT: His test of dilution did not take into effect government action.

MR. CARR: That's what I'm trying to bring out, Your Honor.

THE COURT: To the extent it took in effect the system in force I guess, that's right; that's what you're getting to.

MR. CARR: I think that's exactly what I'm driving at.

THE COURT: Which would be an at-large system, as I understand. You go right ahead and ask him.

Q So in other words the responsiveness of the government really doesn't enter into your assessment at all? A Well, no, responsiveness or governmental performance, as political scientists call it, is definitely a symptom

or a political effect or symptom of dilution. In other words, if I may - if I may?

Q Please. A If you conclude that the voting preferences [60] of a group are diluted over time it would still remain to be proved whether or not a system, whether or not the effect of that dilution was poor performance or poor responsiveness to needs of those people whose voter preference had been diluted.

Q Well, if you had a government, let's assume in the hypothetical you had a government that was responsive to the interests of black and white citizens alike. Could you then have dilution? Could you say that those black voters' preferences were being submerged? A Oh, you could certainly say that black voter preferences were being submerged but I think you would say that the system generally, the administration, the entire system, was meeting demands of black people.

Q Thank you.

THE COURT: And you say that to that extent you could not say that there had been any dilution because regardless of who was there to legislate at least they were being represented and their needs being fulfilled? A To that extent, Your Honor.

THE COURT: That's what I get. A To that extent. I do want to stick with this notion of political effect and symptoms.

THE COURT: I understand.

* * * * *

Q But the actual selection of the interviewees was done by the plaintiffs' lawyers? A Well, the more I learned about the situation, for example, I requested to see initially black candidates, to see white public officials, white candidates and so on. For example, I requested to see Barney Burks after I knew who Barney Burks was, the Mayor.

Q But the initial list, if you will, you said twenty or twenty-five people, the initial list was prepared and selected by the plaintiffs' lawyers? A Well, as I came over on several occasions to Pensacola and Escambia County and as I learned more about the situation I sometimes asked for additions to that list.

Q Okay. Now, when we broke for the noon recess we were talking about the inclusion in your analysis of responsiveness type information. We're clear on what we mean by that, right, the performance of government itself, and I think I asked you whether it was true that responsiveness essentially was a relevant question for the arrival at your conclusion. A I said that I had not examined any of the data which would lead to conclusions on responsiveness. I [63] do teach a graduate seminar in governmental performance.

Q So that must mean that responsiveness isn't a material factor to you in that analysis. The material factors are as you've stated them, whether or not there is so much racially polarized voting that over a time blacks' preferences, if you will, are submerged. A That's correct.

Q Okay. Now, in examining that question of whether black preferences are submerged is a material factor to you whether or not black citizens' votes have played an im-

portant role in deciding election contests even between two white candidates? A That can be an important consideration, yes.

Q So for example if there were a number of races in which the white candidate's victory margin in predominantly black precincts was greater than his overall margin that would be a material concern? A Well, that and a number of other factors, in order to arrive at the conclusion whether or not blacks were what you would call a swing vote.

Q Right. And looking at the data, what is your conclusion in the facts of the City of Pensacola and the Escambia County electorate? A My conclusion is that blacks are not a swing [64] vote or pivot vote.

Q Did you examine a race that involved Mr. Deese and Mr. Albritton for the County Commission two years ago? A Well, I'm sure I saw the returns, yes.

Q You examined all returns, that is, all races for the last ten or fifteen years? A Yes.

Q And you found no evidence that blacks were a swing vote? A I perhaps should explain that there are a number of conditions to Professor James Clubok's, C-L-U-B-O-K, I think it is, Clubok's, category. Professor Clubok categorizes Southern cities different ways. Without looking at the utility of his categorizations you would want to set a number of conditions that would have to be met to launch into a swing vote situation and one would have to be a kind of a consciousness or knowledge of the bargaining relationship that the black community is aware of and speaks about and in fact probably has leaders who in fact do bargaining to decide races between blacks and whites, and although we've certainly heard

testimony that white candidates do in fact seek, a number of them seek black votes, the interview data and my understanding of the situation is that blacks do not view themselves nor could they be viewed as a [65] bargaining group here in Pensacola city elections or in the county.

* * * * *

[84] MR. MENEFEE: I agree, Your Honor. The point is that in the field of social science when you're studying demographic data to get "r" squares and regression analyses that are as extreme and as high as this it's a very unusual phenomenon and that was the extent of it, the only question I have.

THE COURT: If you want to ask him how the "r" squares in this case, if that's your purpose I'll let you ask that question.

Q Dr. Cotrell, are these "r" squares and regression analyses in this, that you've seen in this litigation, how do they compare to regression analyses and "r" squares that you see in social science data? A They are the highest in terms of the independent variable of race that I have seen.

MR. MENEFEE: Thank you, sir. I have no questions.

THE COURT: Does that get you on your feet?

MR. CARR: I believe I have a few questions on recross directed just to that.

THE COURT: Well, you did open up new area there.

RECROSS EXAMINATION

BY MR. CARR:

Q Dr. Cotrell, is what you're telling us that Pensacola, Escambia County, electorate is the worst you've ever seen? A Not at all. I'm telling you that -

TTHE COURT: Go ahead. A I'm simply saying that the "r" squares, the statistical measurements which we have talked about in this courtroom for the last few days, are the highest in the independent variable of race that I have seen.

Q And in other pieces of litigation in which you have testified you haven't relied for your conclusion as to polarized voting on "r" square analyses, is that right? A Not all of them, no.

Q So for example in the Lufkin, Texas, case, *David versus Garrison* -

MR. MENEFEE: Your Honor, I object.

THE COURT: You led into this and asked for comparison. Go ahead.

Q One could identify there actually how many black voters turned out to vote and how many black, how many votes the black candidate got and the number was sixteen hundred and sixteen hundred three? A Yes, there you had a very small East Texas City and identification of black voters there and white voters was very difficult and it was a very, very different situation from Pensacola.

Q And you found that that situation was diluting of the black vote?

MR. MENEFEE: Your Honor, I object.

THE COURT: You're going too far I thought you were asking, there were some cases you have testified there

was no racial polarization or rather you did not have sufficient data to verify polarization, isn't that correct? A All he asked, Your Honor, was regressions, and I haven't used regressions in all these cases. Some of, well -

THE COURT: Well, did you use regression in the Mobile case? A Yes, I did.

THE COURT: I thought you said that since there had been a lack of black candidates running there it was a difficult task. A Well, you know, it stands to reason, Your Honor, that is a different situation in terms of there were no black candidates running and the question there was a white candidate who was clearly identified with black interests who was getting, well, it was a very different electoral situation in the city.

THE COURT: And that of itself might account for a lower "r" two factor? A It could very well.

THE COURT: The fact this is the highest you've seen is not of itself of real significance, I assume, except that you think it establishes firmly racial polarization? That's all? A That's what I testified to earlier, Your Honor, and I thought I'd said that earlier.

Q And racial polarization does not in and of itself mean dilution? A That's correct, Mr. Carr.

THE COURT: Now, that was covered about four times. Thank you, Mr. Carr. I believe we're finally going to let you go. Is that correct?

MR. MENEFEE: Judge, I wouldn't risk another question. We'll be here all afternoon.

THE COURT: He's excused from further attendance.

* * * * *

TESTIMONY OF JAMES J. REEVES

[1014] CROSS EXAMINATION

BY MR. MENEFEE:

Q. Mr. Reeves, my name is Larry Menefee. I'm an attorney for the plaintiffs in this case. Going back, did you mention, I wasn't able to take them all down. You mentioned some of the civic clubs you were active in. I know the Rotary. Which are some of the others, I believe, sir? A. Pensacola Jaycees.

Q. Any others? A. Rotary Club.

Q. Okay, sir. A. Chamber of Commerce.

Q. Okay, sir.

THE COURT: He had a list if you want to see it.

MR. CATON: Yes, sir. Would you like to see the list?

Q. Are there any others? Are those the primary ones? A. Yes, sir.

Q. Okay, sir, what church do you attend? [1015] A. St. Christopher's Episcopal.

Q. Okay, sir. Mr. Reeves, is St. Christopher's Episcopal Church predominantly black? A. No.

Q. What would be the racial composition? A. It would be heavily white.

Q. So it is predominantly white? A. Oh, yes, no doubt about it. There is a black Episcopal Church, as I recall, that maybe disbanded at one time and some of the members went into the church.

Q. Okay, sir. A. As you know, Episcopal Churches are a lot more rigid as far as ceremony than some of the other denominations.

Q. Yes, sir. Now, who is, is Mr. Barney Burks presi-

dent of the Chamber of Commerce at the present time? A. Yes.

Q. Are you familiar with the board of directors of the Chamber of Commerce? A. Not really, I mean if you asked me to name ten of them I couldn't. I probably would know all of them.

Q. Do you know about how many are on, how many members of the board of directors there are, what number? [1016] A. What number of the board of directors? No, I do not.

Q. Approximately? A. No.

Q. What's the name of the Rotary Club you're a member of, please, sir? A. Gulf Breeze Rotary Club.

Q. Is it a predominantly white club? A. It is an all-white club but not because of –

Q. By custom? A. No, it's because it primarily is in, it's a brand new club but it would certainly admit black members if there were members who met the qualifications.

Q. I understand. So it's not by rule or regulation? A. It is white. All the members are white but any person who met the qualifications to be a member would be a member and would be welcome in my estimation.

Q. All right, sir. Could you tell me very briefly what type of law practice you're in? What sort of clients do you serve? A. I'm primarily in corporate, finance, type practice.

Q. All right, sir. A. Office practice.

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[1078] TESTIMONY OF HOLLICE T. WILLIAMS

Q. And how long were you in office before you had to run for election? A. Approximately nine months.

Q. Let me ask you this, Councilman Williams. If you had not been appointed. Well, let's ask about that first election. Let's ask about that election. Could you tell us if you had any intentions of not running for election or did you always assume that you would when election time came in '71, or what was that? A. Well, I did have my fears of running after I had gotten on but then I felt like I was comfortable in doing the job so then I felt like I could run. Now, I felt like it was going to be a very difficult task to do but I did and I won.

Q. Could you tell us. how many opponents did you have in that election? A. Two.

Q. Two, and what was the vote? A. Well, I carried practically all the precincts in the first primary. I don't recall exactly how many it was but I won in the first primary.

Q. Would it be a fair assessment to say you lost two precincts? A. Two or three at the most.

[1079] Q. Do you recall that? A. Yes.

Q. And won all the rest of the precincts? A. Right.

Q. Tell us about your campaign. Did you feel that since a white council had appointed you that you didn't have to campaign for white votes or what was your feeling about it? A. No, on the contrary, I felt like I needed to campaign as hard as ever or harder. In fact I feel that my campaign went probably harder in the white community than it did in the black. I did campaign all over but I did campaign very hard and did – excuse me.

Q. Excuse me. Go ahead, sir. A. Well, to be honest with you, I was reluctant, really, to run, because I felt like I couldn't carry the white vote.

Q. So what did you do in order to get that white vote? A. House to house.

Q. In the white areas? A. Yes.

Q. Such as what? East Pensacola Heights? A. Yes, I did go in East Pensacola Heights. I went in Cordova.

[1080] Q. Cordova Park? A. Most every area. I went all over the City of Pensacola, black and white.

Q. And did you go and knock on doors? A. I knocked on plenty of doors, yes.

Q. How about knocking on doors in the white community? Did you feel a little apprehensive about that? Had you ever done that before? A. No, not to that extent. Now, I was reluctant really to knock on white people's doors to try to get in. I didn't, I didn't know how I would be accepted.

Q. But you did it anyway? A. I did it anyway.

Q. I guess the results speak for themselves. A. Well –

THE COURT: What kind of reception did you meet with, Mr. Williams, as you were going to those white houses?

A. Well, some, I was just like anything else, turned down. Others, I was well accepted. I probably was asked more questions than the normal candidate would have been asked.

THE COURT: Did you have the same sort of reception in black areas, though? Some turned you down [1081] and others asked you questions?

A. Yes.

THE COURT: Was there any difference in the reception accorded you?

A. I was more at ease in going to the black ones but I did have some people to not vote for me. I was hand picked, they said.

Q. Some people said that?

A. Yes.

Q. Councilman Williams, looking back over the time that you were appointed first and then ran for election, do you think the fact that you were appointed – let's say you were not appointed first. Let's say you had run that campaign before you were appointed for the city council. How do you think you would have done?

A. Well, honestly, prior to being appointed I did not ever dream of being in politics but I believe that Hollice Williams could have ran, had I been interested.

Q. Could have run or could have won?

A. I believe I could have won.

Q. You believe you could have won even though you hadn't been appointed to the council first?

A. Hollice Williams, yes.

* * * * * * *

[1089] Q. What about in 1975? That was your other contested race. A. No, I don't remember the exact names offhand. If they were called I could probably recall the names.

Q. Do you know if any of those opponents had ever run for public office before? A. I'm not aware.

Q. Okay, sir. A. At one time one of them was a supporter, I believe, of somebody who was either in the Senate or in the House of Representatives and had worked in politics before and I'm trying to think of his name but I can't recall his name.

Q. He had been a supporter, you think? A. Well, he had worked with one of the senators or one of the representatives in his office.

Q. But had not actually been a candidate? A. Not to my knowledge.

Q. Okay, sir. Mr. Williams, did I understand you to say that you were, that you approached two members of the YMCA concerning the appointment to the city council? A. Yes.

Q. One was Mr. Paulk and who was the other [1090] please? A Frenkel.

Q. Frenkel. Do you remember your deposition being taken in connection with this litigation on, I believe it was August 2nd, 1977? A. Uh-huh.

Q. I think my partner, Mr. Blacksher, conducted that deposition. A. Yes.

Q. I would like to read a question and answer from page ten of that deposition: Question, "You were approached by a member of the city council, is that what you mean?" Answer, "Right." Question, "Which member was that?" Answer, "Paulk, W.J. Paulk.' Did he approach you or did you approach him? A. No, I made the approach.

Q. You approached him? A. Yes. I said that and I was wrong.

Q. I see, sir. So what you said in your deposition was incorrect?

THE COURT: He said that that was wrong. He says that was wrong.

Q. I'm sorry. Mr. Williams, do you have an opinion whether or not the vote in Pensacola is, tends to polarize along racial lines for black and white candidates [1091] when they're running for the same election? A. I have no opinion.

THE COURT: You have no opinion one way or the other? A. No, sir.

Q. Do you remember whether you had an opinion in August of 1977? A. No, I don't.

Q. In that deposition Mr. Blacksher asked you, "Is there still some –

MR. CATON: What page are you on, please sir?

Q. I'm sorry, sure, page 21.

MR. CATON: Thank you.

Q. Line 14. Mr. Blacksher asked you, "Is there still some racial polarization in your opinion?" Answer, "Yes." So you had an opinion at that time.

THE COURT: Do you remember that statement, sir?

A. Yes, I remember that statement, sir.

THE COURT: Well, you had that opinion at that time. That was the opinion you had at that time but you don't have it today?

A. If I was understanding the question, he was asking me at that time was there any racial problems needed to be corrected.

THE COURT: No, no. Read that thing again.

[1092] Q. Yes, sir. "Is there still some racial polarization in your opinion?" Answer, "Yes."

MR. CATON: I think the way he clarified is he thought he meant problems at the deposition.

THE COURT: I tell you what, Mr. Caton, we'll let him do the talking instead of you, don't you think.

MR. CATON: Yes, sir.

THE COURT: All right, sir. Mr. Williams, you heard the question.

A. Yes, sir.

THE COURT: And it was the same question, so far as I can tell, that was asked you today.

A. Yes, sir, this is true. And I think when he used the word "polarization" I alluded to something else and wasn't clear.

THE COURT: What did you think he meant by it today?

A. Well, I thought maybe today he meant when he asked me an opinion whether or not that there was bloc voting, so to speak, as far as black and white is concerned.

THE COURT: But you didn't understand that other question? A. To that extent.

THE COURT: All right, sir.

Q. Mr. Williams, would it help refresh your [1093] memory if I backed up over and read some of the earlier questions starting at the top of page 20. Question, "In your opinion or in your experience have you observed that when a black person is running for office in Pensacola or in the county that the vote tends to polarize along racial lines with the white voting fo the white candidates and the black in large measure voting for the black candidates?" Answer, "At one time that was true." Question, "When you say at one time, give us the time you're talking about."

Answer, "I think at one time we had people who claimed they could deliver votes, both white and black, to the polls. It was being polarized then just the black and white candidates each to his own." Question, "Are you talking about the time now when Mr. Taite was running?" Answer, "Yes, sometime during that time also, I imagine." Question, "And there were folks who thought they could deliver the vote, either black votes or white votes?" Answer, "Right." Question, "Were there ballots circulated among the electorate, one among the black, one among the white?"

THE COURT: Mr. Menefee, let me interrupt you. You're now talking about a period of time sometime prior to August, 1977, in your questions to him.

MR. MENEFEE: Yes, sir.

[1094] THE COURT: He limited it and said at one time there was, so so far you're not really coming up with anything helpful to this question here.

MR. MENEFEE: Right, yes, sir, except that he conceded there was a polarized vote.

THE COURT: It's clear that in that deposition he was saying at one time there was a polarized vote. He also said that in this other one when he got there that he thought you meant something else. If you read the whole thing he might have been talking about the prior period. I think you've carried this far enough, Mr. Menefee.

MR. MENEFEE: May I try to bring it up to date, Your Honor?

THE COURT: Beg pardon?

MR. MENEFEE: May I try to bring it up to date?

THE COURT: If you want to ask some more questions.

Q. Mr. Williams, do you believe there is still some polarized vote today when a black candidate runs and white candidate runs? A. I have no opinion.

THE COURT: What did you say, Mr. Williams?

A. I have no opinion.

Q. Mr. Williams, on page 43 of your deposition, this is, let's see, the question begins –

[1095] MR. CATON: Your Honor, if I could interrupt at this time, I really don't know what the point is, whether Mr. Williams' opinion would have any probative value anyway, but I think one thing, if I could, just this one other point, Your Honor, there's been differences of opinion between plaintiffs' own witnesses as to what polarized voting and polarization means.

THE COURT: Mr. Caton, when we need some help from you in connection with his testimony I'll let you know.

MR. CATON: Yes, sir.

THE COURT: We're trying to go through a deposition and take statements to see about impeachment. I don't want you interrupting with those kind of comments again during this period. Do you understand what I said?

MR. CATON: Your Honor, I –

THE COURT: If you did, you may sit down.

MR. CATON: Yes, sir.

THE COURT: Do you have something else in there that you think – you know the rule on impeachment. I don't want you reading things, misleading the man or anything else. If you have something there you believe is contrary to

the statement he has made today, you may read it. Otherwise, don't read it.

MR. MENEFEE: Your Honor, yes, I do have some- [1096] thing that I think is contrary.

THE COURT: Read it out and let's see what it is.

MR. MENEFEE: I will read the immediate question and answer and go back further, if necessary. "You mean that he was defeated because of the polarized vote to some extent?" Answer, "I can't say it was polarized but it could have been, it still exists, period."

THE COURT: Do you recall that statement, sir?

A. I don't remember that. No, I don't recall saying it.

MR. MENEFEE: I'll be glad to back up.

THE COURT: Bring it up to him and let him look at it.

MR. MENEFEE: Yes, sir.

THE COURT: This is on page 43 of this deposition?

MR. MENEFEE: Yes, sir, page 43.

THE COURT: What did you mean by that statement?

A. Well, I don't know what, I don't know why I said it still existed. I really don't. I thought I was clearing myself up when I said I don't know if it was polarized.

THE COURT: Well, it sums up to this, and we have spent a long time with it. You have said now you have no opinion respecting racial polarization in this city [1097] and county at the present time, and does that mean in present elections you don't know whether blacks vote for blacks as opposed to whites voting for whites?

A. That's what I'm saying.

THE COURT: You don't know about that today?

A. No, I don't know that to be true.

THE COURT: Well, have there been any change in the situation so far as you can tell since you gave this deposition in August of last year?

A. Change in voting, people voting?

THE COURT: Any change in people's voting habits where they vote by way of race or not?

A. Not to my knowledge.

THE COURT: Mr. Menefee, I think you might as well proceed, don't you?

Q. Thank you. Mr. Williams, had you been politically involved prior to your appointment to the city council? A. If you mean politically involved, if you mean in council, government, anything of this nature, no.

Q. Had you ever worked in any campaigns? A. Not just work in a campaign. People I liked, to help to get votes I would get out and ask my friends to vote for them, that nature, but not, say, work.

Q. Had you ever run for office before? [1098] A. No, sure hadn't.

Q. I see. What was your – okay, sir. Mr. Williams, do you think that equal employment opportunity is an issue of concern in the black community? A. Will you repeat that so I understand what you're saying?

Q. Yes, sir. Equal employment opportunity, is that an issue of special concern in the black community, to do away with job discrimination on the basis of that? A. I'm sure it is, yes.

Q. And what measures have you taken as a member of

the city council to alleviate any job discrimination in the City of Pensacola? A. One of the things I have just recently done was to send back the affirmative action program to be reworked. This is one of the vehicles, I think, which will help in that area. Also just recently I asked that, concerning the Civil Service ruling and what have you that was being passed on, I tried to get that cleared up where it would be more equal for blacks to get their jobs by getting clarified the percentage of oral as well as written examination that would be taken in that particular situation.

Q. Mr. Williams, what about in the private sector of employment, that is, private industry, jobs [1099] and such, in the City of Pensacola? What efforts have you sponsored on the city council to improve employment opportunity or to provide equal employment opportunity for all citizens? A. I really don't understand your question, how you've phrased it there. Give me an example, if you will.

Q. Well, any local industry here, maybe a local office supply business, for example. Have you sponsored any efforts in the city council to enact maybe a local ordinance prohibiting job discrimination in employment, in businesses operated in the City of Pensacola? A. I haven't introduced anything of that nature to private industry. However, in private industry I have gone to intercede for blacks who was applying for jobs to make it known that I felt that they should have a job because, they should have that job because they was qualified as anyone else. That's on a one to one basis.

Q. Do you think the city council should enact such an ordinance locally? A. I don't know whether it can or not.

Q. Yes, sir. You could consult the city attorney couldn't you? A. Yes.

[1100] Q. You have access to Mr. Caton? A. Oh, yes.

Q. What about an ordinance dealing with fair housing in the private sector, that is, allowing blacks, prohibiting discrimination in the sale or rental of apartments and houses in the City of Pensacola? Have you considered that? A. Some oh, I suppose three or four years ago, I personally checked on an apartment house in West Pensacola, East Pensacola Heights, to find out why blacks couldn't take advantage of rentals in that particular area. I have not introduced anything like that to the council but these are the kinds of things I think sometimes on a one to one basis, individual basis, we as councilmen do.

Q. Okay, Mr. Williams, let's see, you've been on the council eight years approximately now. Have you sponsored or nominated blacks to the various boards and committees of the city? A. In some cases, yes.

Q. And on approximately how many occasions is that, please, sir? A. It would be hard for me to say. I know every time an opportunity presented itself that I would try, if I deemed a black could fill that position, then I [1101] would bring him on in.

Q. With what success? A. I think I've had some degree of success. I haven't been able to win them all but I've been able to get some in positions.

Q. Well, would you say 10 percent or 50 percent? A. At least.

Q. Fifty percent? A. No, I couldn't say fifty. I'd say ten.

Q. Do you know many qualified black citizens who are willing to serve on civic boards and committees? A. If I understand the question, and I keep getting mixed up on your qualifications on different things, different people are qualified for different things.

Q. Yes, sir. A. Yes, sir, and I do think that we have a goodly number of black people in the area that can fill, qualify in certain positions, if the opportunity presents itself. Yes, I feel that.

Q. Why aren't more of those black citizens serving on the various boards and committees? A. Because they haven't been appointed.

Q. Sir? [1102] A. They just haven't been appointed.

MR. MENEFEE: Okay, sir.

THE COURT: Well, were they considered for appointment?

A. Beg pardon? In some cases, yes.

Q. And were turned down?

A. Yes. Well, usually the council procedure is by vote and if a name is submitted, most all names are considered and in many cases some did get it and some didn't.

THE COURT: There were some whites turned down also, I'm sure.

A. Yes.

THE COURT: Nonetheless it remains over the period you've been there –

A. Yes, sir.

THE COURT: A great many more whites were appointed than there were blacks.

A. Yes, sir.

MR. CATON: Thank you, Mr. Williams.

THE COURT: Cross examination? Or, no, you were on cross examination. Redirect?

MR. CATON: No further questions, Your Honor.

THE COURT: Mr. Williams, you're excused from further attendance. Thank you for being here.

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TESTIMONY OF GOVERNOR REUBIN ASKEW

[1414] REUBIN ASKEW, called as witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CATON:

Q. Your Honor, I present to the Court Governor Reubin Askew. I don't have time to go in all the Governor's qualifications. As the Court is aware, he is currently Governor of the State of Florida and has been. This is his second term. Governor Askew, were you a member of the legislature in the year 1959? A. I was.

Q. And what position did you hold? A. I was a member of the House of Representatives from Escambia County.

Q. Escambia County? A. I was elected in the general election of November of 1958.

Q. This was your freshman term then? [1415] A. That is correct, my first session of the legislature.

Q. Governor, do you recall back in 1959 a bill or change that was presented to the delegation by either the city council or some other group, the gist of which was to change the method of electing the city councilmen? A. Yes, I do.

Q. At my request have you done a little bit of research in this field to try to refresh your recollection even more? A. Yes, I have, because, quite frankly, when I first discussed it with a Dr. McGovern from the University of West Florida, who called me –

Q. He called you first? A. I believe he was the first one who called me. I discussed it and I didn't, at that time

I really didn't have that much independent recollection although I did remember the change and remembered some of the circumstances of the change. Since that time I have refreshed my memory. But my memory still is not substantial, independent of that which I've used to recollect.

Q. I see. And have you reviewed some newspaper articles from that period? A. Yes, I have.

[1416] Q. Do you have any with you? A. I have one newspaper article because Dr. McGovern asked me the question of whether I was asked to introduce the legislation and my answer to him was that I was fairly confident that it had to originate from the city. In my freshman session of the legislature we did not really have a system of local hearings that we later perfected when I became a state senator in 1962, and the way it was handled, frankly, was a great deal more informal than the public hearings that I later established because I had a policy when I became senator that we would not take any action on anything unless a public body asked us in a public meeting for that. And refreshing my memory through the newspaper, the city council did vote unanimously for several changes and requests of the 1959 session of the legislature, one of which was for this change in the election process, a meeting that took place, according to this newspaper article, on April 30th, 1959, by Paul Jasper of the *Pensacola News-Journal,* and which it indicated that, "The Pensacola City Council this morning unanimously endorsed proposed legislation which would create extensive changes in the operation of the city government." One of the items in this news article is that they also approved a change in the city charter which would allow all [1417] candidates for the city council to run at-large instead of from the individual district and

to elect two councilmen from each district. That was the change and also the bill that was introduced became law without the Governor's signature on June 20th, 1959, which would have indicated that it was filed and passed at the very end of the legislative session, which was not uncommon at that point. Almost all local legislation becomes law without the benefit of the signature of the Governor.

Q. Yes, sir. A. In Florida a piece of legislation, opposite the federal government, there's no such thing as a pocket veto. There are so many days after which if the Governor fails to veto it, it automatically becomes law without his signature, and that is the process that is used in Florida.

Q. Yes, sir. Your Honor, at this time I would like to add this newspaper article dated April 30th, 1959, entitled "Legislature lifts ad valorem limit," and it also discusses the request of the city council for this proposed legislation, I would like to add it to the end of defendants' witness list or exhibit list.

THE COURT: Let him see it.

A. I'll show you the relevant paragraph if you'll [1418] come forward.

MR. BLACKSHER: I'm familiar with the article, Your Honor. I'm going to object to its introduction. We have seen this. It seems to us, however, that since we were unable to locate where this appeared on the minutes that the city either ought to be able to produce the actual minutes that indicate this was done or else explain why the newspaper was able to report it being done without it appearing on the minutes.

THE COURT: I'm letting it in evidence because he testified he refreshed his recollection by it as to the action taken and why he took action. The objection is overruled. I'll let you impeach somebody on the city since it does say that. I told you you could get newspaper articles to impeach. I agree with you, since it said it, if you want to use it for impeachment you may do so.

A. May it please the Court, I don't wish to offer anything more than what I'm asked, but at that given point in time there were no formal meetings for the discussion of legislation. Therefore there would have been no minutes of the meeting.

THE COURT: Governor, he was talking about minutes of a city council meeting in which they took action.

A. No, that is exactly what I'm talking about, [1419] Your Honor. You would not have had meetings at that time because they were not official meetings of the city council. As I said, it was a rather informal process.

THE COURT: It was, as between you and them, but he's making the assumption, and it's a reasonable assumption, that the city council before it came to you had gone over it and decided whether to ask the action be taken.

A. Yes, sir.

THE COURT: That is what he's talking about.

A. Yes, sir.

THE COURT: There's evidence here we find nothing in the council minutes respecting the action.

A. Well, the process we employed with local legislation, there would have been no minutes at that given point in time.

THE COURT: It was as between you and the legislative delegation and the city council.

A. No, the city council, because the council when they met on these did not meet formally in session to discuss local legislation. It was a very informal arrangement.

THE COURT: I see.

DIRECT EXAMINATION RESUMED

BY MR. CATON:

[1420] Q. To the best of your knowledge no official minutes were taken of those types of meetings? A. No, sir. No, sir, not in the very beginning. It's only been, frankly, until we were able to get the Sunshine Law, of which I was the sponsor, that you'll find that they've become recorded. Prior to that time, in fact they could well have been talking to somebody in Child's Cafe for all anyone would have known about the request.

Q. So this particular period of time was prior to the adoption of Chapter 286, the Sunshine Law? A. That's correct, and all we would have done is sat around with reporters from the paper there but it would not have been an official meeting of the city council wherein they would have had minutes.

Q. Incidentally, speaking of reporters from the paper, was Mr. Moose Harling a reporter for the paper at that time? A. Yes, sir, Mr. Maurice Harling covered almost all of the city and county. Where it takes several reporters now he generally reported the city, county and the school board. At this particular meeting, however, he was covering the legislative session in 1959 and he was in Tallahassee. Therefore, I'm sure, is the reason why Mr. Paul Jasper covered it. He would probably know as much

[1421] about anyone, as anyone in the county about the workings of government at that time.

Q. And is he here today? A. He's here today. In fact he was given the Jaycee Good Government Award for his contribution to government.

Q. Governor, you say the city council requested this change. Were there other organizations that were also involved in the change from ward to at-large election? A. I think this originally emanated from a request of the Pensacola Chamber of Commerce. It essentially originated from them based upon their desire to, what they felt at that time, was to upgrade the quality of the representation on the council, and running at-large they felt would do this. Now, in addition to this the League of Women Voters, many organizations at that time, were strongly in favor of doing away with what was then thought to be, quote, ward politics. The League of Women Voters led the fight in this state to do away with election from single districts on both the county and school board. I hope, at the appropriate time, however, I would like to express myself, if it's permissible, not now, what my feelings are now about that.

Q. Yes, sir, we understand that. Well, what [1422] would you consider to be the prime reason for this change, this 1959 change? A. The prime change was that they felt like that it would result in a better quality of representation than they felt they were presently getting from the system that they had, by having an election citywide as opposed to part of it being from districts.

Q. Did you agree with that at the time? A. I certainly did.

Q. And – A. I might also say that this was sub-

mitted to referendum of the people in which they approved it.

Q. Yes, sir. Do you recall the city council race in 1955 between Mr. Charlie Taite and Admiral C. P. Mason? A. I have no recollection of that at all. I was in law school at the time, and frankly, until Dr. McGovern even discussed with me I couldn't even remember that much about it.

Q. During the time this change was being discussed and submitted to the delegation did it ever come to your attention that race may be a factor in making this change? A. I think with some it may have been because I did distinctly recall, and this is without the necessity of [1423] independent recollection because it stuck out in my mind, that one city councilman made what I thought was a racial slur.

Q. One city councilman? A. Yes, sir, one city councilman.

Q. How about the other nine? A. I can not recall anything from anyone else of that nature. I frankly was offended by the remark and, frankly, had I thought that it was racially motivated I not only would not have introduced it, I would have opposed it, because the 1959 session of the legislature was a difficult session in which there was substantial racial legislation coming before it and the biggest fight in the 1959 session of the legislature was that the Senate had passed what I felt was some undesirable legislation which I characterized on the floor of the House in rather, very clear terms, and the fight was to keep the House from extending the session past the sixty days, which required a certain vote, in order to keep from considering the legislation that the Senate was passing. Gover-

nor Leroy Collins was Governor at the time. He wanted to get us out of there so we would not pass any bad legislation. Former Circuit Judge Tomm Beasley, who was then Speaker of the House, came down from the rostrum and made a stirring speech that we go home and not stay there to [1424] consider what would have been legislation in my opinion that would have been very adverse to Florida, and as a freshman I had the privilege of leading the fight. I say that, Mr. Caton, so that you will put in context that from the time I started running in politics black people have supported me and from the time I started in politics there was always that undercurrent that was attempted to be inserted in my election. I was sensitive in that regard.

Q. Yes, sir. A. And had I felt at the time that that was the reason, as I say, not only would I not have introduced it I would have opposed it, which would have killed it.

Q. Had you opposed it, it would not have passed. A. That is true, because there were two members of the legislature, excuse me, two members of the House. One was Mr. Stone, a dear friend of mine, who was an outstanding member of the House, who was killed in an automobile accident later, and Mr. Philip Beall, who was our senator, and nothing could pass when there's only two if both didn't agree, so I cast off that remark, frankly, as being the opinion of that one councilman.

Q. Talking about that one racial remark? A. That one councilman, because I think he was trying to decide which way he would be better off and I [1425] think he decided he might not be better off either way.

Q. Which councilman was that? A. I will answer, I would almost prefer not to, if the Court tells me, because his remark was of a racial nature.

Q. Well, the name has already been mentioned. A. Well, Mr. Red McCullough. What he said was that, "If this bill doesn't pass we're going to have a salt and pepper council." That's what he told me. And as I say, I remember that. It stood out in my mind and I don't need to be independently recalled of that.

Q. But I believe you stated you disregarded that as his opinion. A. I was offended by his remark because I thought it would be one of the better things that could happen at this time.

MR. CATON: That's all I have, Your Honor.

MR. FLEMING: Your Honor, may I make just a procedural point prior to cross examination. At the Governor's request I would like to note for the record the Governor is appearing here today voluntarily, not under compulsion of subpoena, and any subpoenas which have issued have been discharged at the Governor's urging. Is that correct, Governor?

[1426] A. That is correct.

MR. FLEMING: Thank you, Governor.

THE COURT: You wish to ask a question?

MR. FLEMING: No, Your Honor, I have no questions.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. BLACKSHER:

Q. Governor Askew, I'm Jim Blacksher from Mobile representing the plaintiffs. Could you set the scene for us where this meeting took place where Red McCullough's racial remark was made? Where was this? A. I don't really recall. It seems to me it was connected with some

type of rally somewhere. It may have been some, it seems to me it was outdoors but I would, I don't really have an independent recollection of the context. I just have a recollection of the remark.

Q. Were the other council members present? A. I can not recollect who was present but I do know that in the back of my mind at the time I felt that I was appreciative that I did not think that was a consensus of the other members.

Q. Did everyone else present in your recollection stand up as one and disavow this racist remark? A. I can't even tell you who was present so I [1427] can't very well tell you whether they stood up and disavowed it, but I can't recall anything other than the fact that I didn't respond. I had gone, I had gone through a race, Mr. Blacksher, in which some of the people in this community had indicated they were going to burn a cross on my lawn. Some had made some very strong remarks toward me because I refused to support any type of legislation that would have closed the schools. So what I want to tell you, that was during the election in '58, so that by the time 1959 had come I had fully made my position clear, so as I recall I said nothing further about it except I didn't appreciate the remark.

Q. Governor, I think you've firmly established what your feelings were when you introduced the bill and my line of questioning is directed at trying to determine what you knew of the motives of the council members who proposed the change. A. I can not state what the motives categorically of any of the members of the council would have been. I can only give you the benefit of the way in which I'm sure I received it. And had that been what I thought was the motivation I simply would not have introduced it. I realize that is not being completely respon-

sive, you know, to what you say, but I can't really speak to what the [1428] motives of the other people may have been. There may have been some who were motivated in this direction.

Q. The exhibit that's been introduced as city exhibit 1, the newspaper article, do I understand that Paul Jasper wrote this? Is that your understanding? A. Well, I only know that that is his name beside that story and I would assume that he covered the meeting.

Q. April 30, 1959. And you don't know whether there are minutes that support what this paper says or not? A. No, sir, I do not. I would think there would not be because these discussions on local legislation at that time simply didn't take place in a formal meeting.

Q. Can you recall whether after this April 30, 1959, event at which the county approved a change in the city charter which allowed candidates to run at-large rather than from individual districts, whether after that there was a meeting between you, Mr. Stone, the council members, regarding introducing the legislation? A. No, I'm sure there wouldn't have been a meeting. It was a matter of me checking with Mr. Stone and me checking with Mr. Beall. It was done, frankly, at that time, very informally. But everybody would have signed off on the bill and I would, most of the legislation [1429] during that session was introduced in the House. In fact I became the one who would wind up doing most of the work introducing the legislation.

Q. Okay, sir. I guess what I'm trying to establish, as best I can, was how was it communicated from the council members to the legislative delegation that there was a desire to make this change? A. I rather think somewhere along the line I was sent a letter from Churchill

Mellen, whoever was the city attorney at the time, inclosing copies of it and asking us to introduce it. Mr. Mellen also used to come to the sessions and present the legislation but the important thing is that there was an understanding between all of us that we would support it and it had to have either a local advertisement thirty days prior to introduction or it had to be submitted to a referendum. In this case it was submitted to a referendum and I would think that it was, it would have been communicated to us either in writing by letter or handed to us personally. But I went back after Dr. McGovern's call, I went back and could not find any records of the 1959 session and I also asked members of my, the law firm I was formerly associated with, if they could find any trace of that 1959 session. I have to tell you that we have nice offices over there now for members of the legislature. When I went there, your [1430] office was your desk on the floor. You had another desk upstairs you shared with other people and it was frankly not a very good arrangement for keeping good records, and I'm sure it was communicated to me in some way.

Q. Governor, you mentioned Maurice Harling. A. Maurice Harling, H-A-R-L-I-N-G.

Q. As a reporter at that time, and is he now on your staff, do I understand? A. He has been with me since the time I have been Governor. And he worked in the News-Journal. He came, I believe, sometime in about 1947 or '48 and he's covered every session of the legislature from then up till the time I became Governor. He retired from the *Pensacola News-Journal* and I was fortunate enough to have the benefit of him to come to work with me.

Q. When did he retire from the *News-Journal?* A. Well, he retired at the same time that he came to work

for me, which would have been at the first of the year 1971.

Q. All right, sir. So he was around here as a reporter in 1959? A. I can tell you that he probably knows more to the extent that he has independent recollection about government and the workings of government probably than anyone that I know.

[1431] Q. Well, with regard to the extent of Mr. Harling's knowledge and the knowledge that people at the newspaper had about government, Governor Askew, have you seen the editorial that's been introduced regarding this election and the statement in the editorial, which I'd better read since there's some disagreement, Your Honor, about what exactly it says. I'm going to read you the editorial and get you to comment. A. I have read it, but, completely the editorial, and frankly I have absolutely no recollection of ever having seen the editorial.

Q. Well, that wasn't going to be my question, so better let me read it.

THE COURT: You want to read him only that part you were talking about, I'm sure, not the whole editorial.

Q. Just the one paragraph, yes, sir. "This would be an advantageous change for at least two reasons. One reason is that small groups which might dominate one ward could not choose a councilman. Thus one ward might conceivably elect a Negro councilman. Thus one ward might conceivably elect a negro councilman although the city as a whole would not. This probably is the prime reason behind the proposed change." My question to you is based on what we've said, that isn't it fair to say that the newspaper at that time with people like Mr. Harling working on it should have been in the know as far as what was going [1432] on behind the scenes politically on a local level?

A. And there may well be an explanation of why that was like it was. It's really incongruous, you know, with Mr. Marion Gaines, who was the editor, you I think was one of the most outstanding editors any newspaper had, and Mr. Don Hogan, and of course you have to read the next paragraph with it. But I think you'll also find that Mr. Harling in his explanation of the pros and cons on it never mentions anything like that. So that may at that time have been the feeling of one person on the *News-Journal*. I personally, as far as I'm concerned, that was not my recollection of it.

Q. Do you think that – strike that. Governor, I think in fairness we both ought to take note of the differences in just the way people thought about racial matters in 1959 as opposed to the way we do now in terms of what would be considered then as active and vicious racism as opposed to now. Isn't it possible that in those times, and I'm talking about 1959, there were still people who thought about good government and keeping blacks out of government in one and the same breath? A. Yes, unfortunately there are still some today.

Q. So that the person who wrote this editorial and the people on the editorial board who approved it were [1433] not necessarily raging racists, at least in the context of those times? a. Yes, sir, I think that's a fair statement.

Q. In your opinion could an editorial like this, written at that time, have had any effect on the electorate in regards to how they would turn out for or against the referendum? A. I think that with that insertion in the editorial unquestionably it could have had an effect in appealing to those who would change it for that reason.

Q. Governor Askew – A. That was in regard to the referendum, you know, as opposed to the request for the legislation.

THE COURT: Was that editorial before or after the referendum?

MR. BLACKSHER: I beg pardon?

A. The editorial, I think, was in September.

MR. BLACKSHER: It was on the eve of the referendum.

THE COURT: On the eve of the referendum?

A. It was in September after such time as the legislation had been passed, Your Honor.

Q. Right. That was just before the vote was taken. Governor Askew, counsel for the city didn't give you the [1434] opportunity to state your present position so I want to call to the Court's attention that already in evidence as plaintiff's 35 are two newspaper articles and I would like to read pertinent sections from them and see if you still agree with this, Governor. One is December 6th, 1976, *Miami Herald:* "Askew's speech, however, made it clear that he wants a Constitutional Revision Commission to consider single-member districts for not only the legislature but local government as well 'to insure greater representation to minorities.' " Would you still stand by that statement today, Governor?

A. Yes, sir, and if it meets with the approval of the Court I would like to amplify on it.

THE COURT: All right, sir. Go ahead, sir.

A. I want to say that when we look back twenty years I don't know why we permitted some of the things to ever take place that did take place, and I don't say that in reference to the introduction of that law. At that time we were, I think, concerned about what often was called ward politics. I think that day is behind us. I think that we have

the benefit through television, from media, for people to make up their own minds and I have come to believe and believe very strongly that while single-member districting will not require necessarily fair representation among minorities, in my opinion it is the [1435] single most important step you can take to try to better insure representation by minorities. I believe until every multiple body that is elected such as your school board, your county commission, your city and your legislative districting, until they are districted singularly where one person votes on one person from all of it so the people know who to hold accountable, pinpoint responsibility, and that the districts are fair and not gerrymandering, which often took place back then because districts sometimes were arranged to insure that there would not be minority representation, and I personally feel that if black people in this case, other minorities, if they're not afforded an opportunity through single-districting to speak and elect some of their own people to the boards, which that government is supposed to represent them, I don't know how we can say that government is truly representative of all the people. In Florida we have a handful of black people in the legislature in spite of the fact we have a substantial percentage of our people who are black. We have a half a million Cuban-Americans in this state and yet Dade County has no Cuban-American. And I have just got to believe strongly, and I have said so, I was disappointed in the Constitutional Revision Commission that they only districted legislative districts but that was at least a step in the [1436] right direction, because we need more minority representation on government if government is supposed to fairly represent them and if we want young black people in particular to feel they're part of the system. Then they have got to be given a chance in a fair way and not be outvoted with a larger majority. And I understand, I have tremendous respect for

the judge presiding in this Court and I know that he has to enforce the federal law as it's set forth as opposed to doing what he may or may not like to do. I understand the context under which this takes place. But I've been in government twenty years. I think that we've come a long way. We have a long way to go. It may not be the context of litigation that brings this about but it is going to happen and it's going to happen one way or the other, for one reason because it's right in terms of pinpointing responsibility and because it is fair.

MR. BLACKSHER: Okay, sir. Thank you.

THE COURT: Any redirect?

MR. CATON: Just one question, Your Honor.

REDIRECT EXAMINATION

BY MR. CATON:

Q. Governor, you've stated very eloquently the case for single-member districts. Is there not also a case for the at-large system as espoused by other people with [1437] qualifications maybe not as well as yours but similar? A. Mr. Caton, I can only state my views.

Q. Yes, sir. A. But I want to assure you that I am now finishing up twenty years. I've been privileged to serve as Governor of Florida longer consecutively than any person in the history of this state and I'm here to tell you that when you force people all to be elected within the whole political constituency you are indirectly disenfranchising a lot of people from fair representation.

Q. Yes, sir, I understand your viewpoint. My question was, are there people that hold a different philosophy, legislators throughout the state? A. There are. There are many people who do hold this different view, but I am

gratified that just as I have come to appreciate the importance of this, I believe they will come to appreciate the importance of it.

Q. Yes, sir. A. If they want a government that is supposed to be truly representative of all the people.

MR. CATON: Yes, sir. That's all I have, and unless there's some further questions I would like to thank the Governor for being here today, Your Honor.

THE COURT: Well, I think there will be no further questions, Mr. Blacksher. He's had his chance at him. [1438] Governor, thank you for being here and you're excused from further attendance. A. Thank you, sir.

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TESTIMONY OF MARVIN G. BECK

[1462] MARVIN G. BECK, called as a witness by the defendants, being first duly sworn, [1463] testified as follows:

DIRECT EXAMINATION

BY MR. LOTT:

Q. Your Honor, this is Marvin G. Beck. He's presently a county commissioner on the Board of County Commissioners for Escambia County Florida. He's chairman of the Board of County Commissioners for a one year a term which expires in November as far as chairmanship is concerned. He's a lifelong resident of Escambia County, His age is forty-five, residence address 1264 Whipporwill, Cantonment. Formerly athletic director and basketball coach at the University of West Florida and formerly teacher at Pensacola High School.

THE COURT: He was elected when?

MR. LOTT: Nineteen seventy-six.

THE COURT: For the record we need to ask him to verify that on the record.

Q. Mr. Beck, are the statements I just made about you true and correct? A. Yes, they are.

Q. Mr. Beck, you were first elected to the Board of County Commissioners in 1976. When was the first time you ran for countywide political office? A. This was the first time I'd entered into politics.

[1464] Q. And what party affiliation did you have when you ran? A. Democratic.

Q. All right, did you participate in the Democratic Primary in September of 1976? A. Yes, I did.

Q. Who were your opponents in that election? A. The incumbent was Mr. Sam Armour. Other members in the race were Mr. Clarence Gulsby and Mr. Harold Brown and myself.

Q. Okay, during that campaign what were the issues that you campaigned on and that any of the other candidates addressed as far as the county is concerned? A. I think the basic issue that I tried to put forth is accessibility of a county commissioner. I found that the incumbent was not accessible to the people and this is a big point that I tried to put forth in my campaign, that I would be accessible, I would have an office in the Court House and I would be there whenever people needed me and wanted to reach me.

Q. All right, as a result of the primary was there a runoff? A. Yes, there was a runoff.

Q. Who were the candidates in the runoff? A. It was Mr. Armour and myself.

[1465] Q. And thereafter, the runoff results? A. Of course I won the election and there was not a Republican opponent.

Q. No Republican opposition? A. No Sir.

Q. In the general election in November. Okay. Would you describe in what areas you campaigned for the black votes in Escambia County. A. Well, as you know, the rallies were set up in all different areas of the city and of the county, and of course I attended all of the rallies that were sponsored by the Democratic Committee. In other areas I talked to a group of black ministers out in the Ensley area at a church who represented a large area of the city and the county. That was on the western side of Ensley, I guess you might say. And in the Cantonment area at the recreation center in that area. Also on the

eastern side up in the Century area and plus down in the southern part of District Five and the eastern part of that district in the Ensley area too.

Q. All right, what kind of rallies or gatherings did you address during your campaign? A. As I said,, these were basically scheduled rallies, Democratic rallies throughout the county that we, that all the candidates, you know, had the privilege and [1466] opportunity to speak at these rallies.

Q. Were some of the rallies produced predominantly for the benefit of black voters? A. I'm not sure that they were for predominantly black voters, just the location of them. In other words Pensacola High School stadium is an area that is there. It's not specifically for a black section.

Q. All right. Do you consider the black vote to be an important factor in the success of your election as county commissioner? A. I certainly do.

Q. How so? A. Well, I consider all votes as being important in getting elected and of course this is true of black and white. Anyone that, you know, is eligible to vote that I can represent is very important.

Q. Did you have any black citizens assist you in your campaign efforts? A. Yes, I did have some that assisted me. First of all I might say that I really did not have a group, an organization that some people might have. Basically it was myself, my wife and my children, and I had a sister and brother-in-law that basically put forth my campaign efforts. And I did have some friends in the black community that did help to pass out literature and to speak to groups [1467] for me.

Q. Who were those persons, if you can recall some of them? A. I had Mr. Elmore Standberry in the Canton-

ment area who works for St. Regis. He helped in that area, and Mr. Lawrence Green in the Ensley area. Mr. Cleve McWilliams, who is with the school system. Esther Williams, Marion Hargraves. These are some of the ones that I can think of off the top of my head.

Q. You're presently the county commissioner in District Five and that's a residency district in the county. Would you describe briefly what the district boundaries are. A. Basically it's from the Interstate north to the eastern boundary of the Escambia County River to the western boundary of Perdido River all the way to the Alabama line, the western boundary and northern boundary.

Q. Would you briefly describe for the Court the functions of the residency district as far as the county commission governing its territory is concerned. In other words what effect does the fact that you represent or you're elected from a residence district have on your interests in the county? A. I don't exactly know exactly what you mean.

[1468] Q. Well, you come from a residence district, District Five, and that's where your residence is located. What areas of special interest come to you as a county commissioner from District Five as opposed to all over the county? A. Well, I would say the main concern in District Five would be the roads, the system in that area. As you know or may not know, the road paving formula was based on 20 percent in each district, and of course District Five, which is my district, has over three hundred miles of unpaved roads. This is 77 percent of the unpaved roads in the county. So I think this was a major problem of the people living in that district. Of course it is a rural area in the northern part of it. Of course the southern part of that district is a district that's probably increasing more

rapidly than any other section of the county because most of the people are moving out in that direction.

Q. All right, as far as road paving is concerned you mentioned the 20 percent allocation of road paving funds to District Five. Is that presently the situation in the county commission? A. No, I was able to convince or persuade the other commissioners that it was really not fair to the people in District Five, where you had 77 percent of the [1469] unpaved roads, to only receive 20 percent of the money, and this had been the case I don't know how long, but this is one reason that we had so many problems in District Five because whenever you have 20 percent of the money and 77 percent of the roads that need paving, it developed over a long period of time and you have a problem. I was able to convince the other commissioners with the help of the constituents in that group, I think, to change that formula. I now receive 39 percent of the road paving money, in road paving budget money for District Five. Last year, my first year on the board, we had a total of like three hundred twenty-two thousand dollars for the entire county budget. That was based on 20 percent per district, which amounted to about sixty-five thousand dollars per district. This year we have about 1.4 million dollars in our road paving budget and my budget for District Five is like five hundred twenty-two thousand dollars. So it has, we have more money in the budget this year and we are also, I'm receiving more money in District Five, which we're able to get a lot more done in that area.

Q. What argument did you use to persuade the other county commissioners to allocate additional funds to you? A. Well, when I first started, I tried to convince them that I needed this money based on just figures of being [1470] 77 percent of the unpaved roads but I didn't get anywhere. I was voted down four to one. But then I

kept up my work and every time I would go into the district I would tell the people that were talking to me about road problems and needing roads paved that, I would tell them that's, "Well, I agree with you but you've got to help me convince those other commissioners that you vote on those people just like you do me," and I think this, you know, had a help in convincing them that they should change that formula.

Q. Okay, since you've been a county commissioner have there been substantial road paving efforts made in District Five? A. Since I've been a commissioner?

Q. Yes, sir. A. Yes, from the amount of money we have turned it around, like I said. We had sixty-five thousand dollars which was left from previous administration, up to five hundred twenty-two thousand dollars. So you see it's a considerable amount going into District Five.

Q. All right, sir. In making your determination of what roads were to be paved as a result of this additional money what kind of criteria did you use to determine what roads would be paved? A. Well, as you know, I have a very large area [1471] that I represent. It's from the east side to west side, which is approximately twenty-five miles, and it's approximately forty-five miles from north to south. And my main concern is trying to spread this out as much as I possibly could in all areas to make sure that we could try to provide something for as many people as I possibly could. The other point was that the volume of traffic on the roads and also, you know, the need, the problem areas where we had more complaints. This would be one of the criteria. If we had, you know, whenever it comes a rain or something we have fifty or seventy-five calls in a particular area, then of course, naturally, I'm going to look at that area. But basically it was based on

volume of traffic, trying to spread out, you know, geographic location and the need, the severity of the problem.

Q. Would the race of the person complaining about a road problem have any bearing on your decision to allocate money for the paving of the road? A. No, I think you can look at the list of roads that I have on my paving list and it would verify that.

Q. All right, sir, from that paving list would there be roads that are in predominantly black neighborhoods or black areas or that serve predominantly black people in [1472] your district? A. Yes, that is true.

Q. Could you enumerate some of those roads and explain how they were chosen? A. Well, we have a prime example, would be Quintette Road and Welcome Circle, is a predominantly black section. Quintette Road is a road that runs from Old Highway S-95A over to 29. It's what we call a collector road and this is basically what I tried to spend my money on paving at this time because we did not have enough money to get to all the requests that I had. I had as of last week, I had eighty-five petitions for road paving. You know, this is in addition to the ones that I have on my list. And of course I received a couple in last Thursday's meeting. But in the Cantonment area, the streets of Booker, Lewis, these areas are predominantly black that are being resurfaced and blacktopped in that area.

Q. Mr. Beck, let me ask you a question at this point. There was testimony earlier concerning the number of streets paved in black areas in Cantonment. Would you say that more than two streets in the Cantonment area are paved or under paving contract at the present time? A. Yes, I would say it would be.

Q. About how many more? Do you have any idea? [1473] A. Well, you say completed at this time or to be paved?

Q. Or under contract to be paved?

MR. BLACKSHER: Objection, Your Honor. I think to ask him, no, that's all right. I'll check it on cross examination.

THE COURT: Can you answer that question, Mr. Beck? Do you know the status of those roads out there now?

A. As of, no, I haven't been in that area in the last week but they're under contract to be paved.

MR. LOTT: We'll have some other testimony on the same thing, Judge.

THE COURT: I believe you all can get together and more or less stipulate on it. As I understand, a contract has been let and the contract is underway and it will take care of most of the streets in the Cantonment area. Isn't that the testimony I've heard so far?

MR. LOTT: Yes, Your Honor.

THE COURT: Go ahead.

Q. Are there areas in your district that are predominantly white that have unpaved roads and that there have been requests for road paving? A. Oh, yes. I have a large number.

Q. Are there requests received from white persons by you for paving in District Five that will not be responded to immediately and black areas that will receive paving in advance of the rest of those white areas?

MR. BLACKSHER: Objection to counsel leading the witness. I think if we could –

THE COURT: You were leading the witness, Mr. Lott. Watch your questions.

Q. Yes. sir, Your Honor. I'm trying to facilitate moving the witness along rather than trying to drag it out but I'll try not to suggest the answer to the witness. Mr. Beck, would you say the allocation of road paving in District Five as a result of your actions predominantly benefits whites disproportionately over blacks?

A. No, as I pointed out, I've tried to go to the geographic locations and trying to spread it out in the large district that I had and trying to, you know, make it as far, as much as possible to all the citizens. And I do not feel that I have favored, you know, white over black or black over white.

Q. Do you feel that the supply of paving and other services that you have control over in District Five to predominantly black areas is an important element in your responsibility to the constituency that elected you?

[1475] A. Yes, I do. For example, the area in Quintette, Welcome Circle, a citizen, Mr. Elmore Standberry, Mr. Gray, I went with those people and we rode over those roads right after I was elected and I felt –

THE COURT: Mr. Beck, do I understand that the way the county commission operates is that the individual county commissioners go into the wards from which they were resident and they decide the road projects? You don't rely on your commission staff for that?

A. Yes, sir, we do. We have engineering staff that has a list of the roads and the problem areas.

THE COURT: But then each individual commissioner in a particular residence district decides what's going to be paved and what isn't? Is that what you're telling me?

A. Based on the volume of traffic and general location.

THE COURT: Why do you have an administrative staff, engineer and county manager? Aren't you a policy-making body?

A. Yes, sir, we have.

THE COURT: Yet you take that policy where each individual one of you decides which roads are going to be put in the residence district from which you come. Is that [1476] what you're doing in the commission?

A. Yes, sir, the road paving money is divided up in each district and you have the authority to go with engineering and with staff to determine the basic need for the final decision –

THE COURT: You don't have an overall policy where the money goes where it's good for it, regardless of where it needs to go?

A. This is always, Your Honor, you work out with engineering and this is part of your decision.

THE COURT: In other words the commission serves as more than a policy-making body; it involves itself in the day-to-day operations of the county to such extent that each of you in a residence district from which elected may go down and ride out there and say, "We're going to pave this road and not that one." That's the way you run it?

A. As far as road paving is concerned, this is true.

THE COURT: All right.

DIRECT EXAMINATION RESUMED

BY MR. LOTT:

Q. Mr. Beck, in connection with drainage problems, and you can address your question, your answer to questions, on a countywide basis, are you familiar with drainage problems [1477] in black areas that are predominantly black neighborhoods that are under construction or improvement by the Board of County Commissioners? A. Well, we've already mentioned the area in Cantonment as one that's under construction.

Q. Are you aware of areas in predominantly white neighborhoods where more severe problems exist as far as drainage is concerned but which are not receiving attention from the county commission? A. Yes, there's an area that's south of the Nine Mile Road and west of Chemstrand Road, through that area, that's been a continuous drainage problem that's connected, you know, with state and county problems, that we have not been able to solve at this time. We are hopeful we'll be able to work something out with the state and so the county can solve that problem.

Q. All right. I would like to direct your attention for a few moments to the proposed charter that was recommended by the Charter Committee appointed by the Board of County Commissioners to study charter government and which committee made a recommendation to the Board of County Commissioners concerning single-member districts. Are you familiar with the recommendation of that committee to the Board of County Commissioners concerning single-member county commission districts? [1478] A. Yes, I am.

Q. All right, what was the decision of the Board of County Commissioners with respect to that recommenda-

tion? A. We voted, I think, to recommend countywide elections and from my point of view I think I just pointed out the example that I used to be able to get the road paving formula changed as my reasoning why that I felt like that the countywide election is better than the district election because I felt like that is it went to a district election that the other commissioners would have no need to share or change the formula. They could set it up at 20 percent in each district and we'd be right back where we were and not getting anything done for the people in the north end of the county. And that's the reason that I voted, I felt like that the countywide election would benefit the people in that area countywide rather than trying to go to a district and be isolated, so to speak.

Q. Okay. Under the present at-large election system do you receive complaints from citizens and requests for service from areas outside your own residency district? A. Yes, I do.

Q. Do you issue work requests for those kind of requests? [1479] A. Yes, I have issued work requests for, in all districts of the county.

Q. Would you explain briefly for the Court what a work request means? A. This might be a particular problem, it might be a driveway that's washed out or something in a district and someone calls my office and a lot of times we can go ahead and issue a work request for the county road department to go and take care of this driveway. This is issued through my office. It doesn't necessarily have to be in my district. I have issued them in all districts for this type –

THE COURT: You don't consult anybody but yourself on that?

A. No, sir.

THE COURT: And it goes to your county engineer?

A. Goes to our county engineering.

THE COURT: It's a request but he sort of treats it like a command to go do something and does it?

A. Well, they check out whether or not it needs to be done. They'll send an inspector and see if it is a problem, and of course the inspector will make that report to the engineering department and it's related to the road department and they take care of it.

THE COURT: And that's a day to day operation you're [1480] involved in? Now, you do this as chairman or each commissioner does this?

A. Well, I would think that each commissioner.

THE COURT: Each commissioner can issue a work request?

A. Yes, sir. Yes, sir.

Q. Commissioner Beck, do you feel that the needs of black constituents could safely be ignored now that you've been elected and you could act with impunity towards requests from black citizens for county services under your control? A. Excuse me, I didn't hear all your question.

Q. I'm sorry. Do you fell that you could safely ignore the needs of your black constituents or black persons in Escambia County and still get reelected or act with impunity towards those requests without fear of action at the ballot box by those people? A. No, I don't. I don't think you can neglect any segment of the county and get reelected. I think, you know, accessibility and what you do while you're there and how accessible you are and how you represent the people, I think, you know, you've got to do that to get reelected.

Q. Do you feel that you have adequately represented and that you do adequately represent the interests of black citizens of Escambia County? [1481] A. I certainly do. I feel that I represent all the citizens of Escambia County.

MR. LOTT: No further questions.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Beck, did anybody ever accuse you of not having good sense in giving up a job as basketball coach to go into politics?

A. Yes, sir, I've been accused of that.

THE COURT: I'm not sure that's exactly relevant. It may be Mr. Beck himself has wondered about it from time to time. Is that right?

A. Yes, Your Honor, you're right.

THE COURT: Go ahead, Counselor.

Q. In your campaign for county commission, let's say in the Democratic Primary since you were unopposed in the general election, how much did you spend on your campaign? A. I think it was approximately fourteen thousand dollars.

Q. How would you compare that with the amount spent by your opponents? A. I really don't know. I haven't looked at the record on what they spent on the campaign.

[1482] Q. When did you say the Quintette Road and Welcome Circle were paved? A. It's under contract to be paved. They have the base material down now. It's waiting for the final cap on it.

Q. Isn't it a fact that those contracts were let after this law suit was filed? A. I'm not sure when the contract was let for the road paving.

Q. Well, were they let in '77 or in '78? A. They were let in '77.

Q. And what part of '77? A. Well, our budget year is from October to October and when they were finally approved, I don't know.

Q. What about the Cantonment paving and drainage work? When was that let? A. I'm not sure on the date that the Cantonment project was let. But I know it's been underway for some time. We've had a weather problem in the area.

Q. Well, do I take "some time" to mean several weeks or several months or several years? A. Several months.

Q. Several months? A. Yes.

Q. Now, is there some federal money going into [1483] the Cantonment project? A. Yes.

Q. Isn't it a fact that you've gotten some community development money to do this project in Cantonment? A. Yes, this is true.

Q. And there are certain guidelines pursuant to the feds on exactly what areas you can use this community development money in, right? A. This is true.

Q. And when you use community development money it has to be, all of the entire cost of the project has to be paid for by the community development moneys, is that correct? A. Yes, this is true.

Q. This area that was south of Nine Mile Road and west of Chemstrand Road that Mr. Lott referred you to

which is predominantly white, did you say it was in worse shape than Cantonment? A. I would say it would equal the Cantonment area, yes.

Q. But it's not being fixed? A. No, sir.

Q. Okay, are you saying that the predominantly black areas in Cantonment are getting preferential treatment [1484] over this predominantly white area? A. No, I would not. You know, this is just a matter of money again, what you can do.

Q. Was the community development money available for this particular location west of Chemstrand Road? A. No, it was not.

Q. Did you say that you were on the committee that was appointed by the county commission to study charter government? A. No, I don't think I said that.

Q. All right, I misunderstood you. So you didn't have an opportunity, I take it, to voice your opinion on district elections as opposed to at-large elections until it came up for a vote on it? A. We had public hearings as a body, the commission group, the county commission, held eight, ten, I don't know exactly how many public hearings. But basically we were there to hear the input from the citizens and not to voice our opinion one way or another on the charter government.

Q. Okay, I want to go into the reason you gave the Court why you voted for at-large elections and striking from the committee's proposal the single-member district aspect of the charter proposal. As I understand it, it's your contention that if you had to run from a district [1485] you would not be able to deal with the other commissioners and make them be fair to the constituents in your district as regards paving. Is that what you

mean? A. Well, I think it would help, you know, to know that each commissioner has to rely on all the citizens of Escambia County to be reelected. Yes, I think this would be the assumption.

Q. Have you done any, have you got any personal background to make this judgment or have you done any studies to make this judgment? A. No, sir, I was just going on the record of what it has been for a number of years. It's been 20 percent of the money in each district and it's now 39 percent in District Five and a lower number in some of the other districts.

THE COURT: It's just been an arbitrary 20 percent for a number of years? A. Yes, sir.

THE COURT: Well, now that means, Mr. Beck, in a way, what the commission was doing while you talk about representing each other generally, and that's what they're supposed to do under the law, as I understand it, nonetheless they were just arbitrarily giving somebody in the district, weren't they; they were in effect representing a district.

A. Also the other side of that, the commissioners [1486] are able to use money in other districts rather than their own district.

THE COURT: Well, I know, but I thought you said for a number of years until you were able to get some more money it had been 20 percent arbitrarily in each district.

A. Basically I think this is the way it has been.

THE COURT: I see.

A. I'm sure how many years it has been based on 20 percent per district.

THE COURT: I was just suggesting to you and I was

trying to understand this, under the Florida law you're supposed to be a policy-making body, are you not, and you represent everybody in the county.

A. Yes, sir.

THE COURT: And you're elected from a resident district so you'll have knowledge of the particular district to contribute to the commission but then how can you say you're fulfilling that function and why aren't you in effect really treating it as single-member districts when you, instead of doing all that, each one of you takes a district or he's sort of responsible for that district and gets all the money he can for that district and he goes down and makes decision where the money is going to be [1487] spent instead of turning it over to the administrative, your manager, your engineer, and letting them set the details of it. I don't understand that approach. A. Well, we get that, your Honor, we get the list from our engineering department on, you know, all the roads that are brought up for discussion for pavement and this is where the decision is made, you know, from the staff that brings the list to us.

THE COURT: But then you go into a district and make final decision, each of you individually?

A. Yes.

THE COURT: All right, go ahead, Counselor.

CROSS EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Mr. Beck, I'm still puzzled by the last answer you gave me, which indicated that you thought that the way, well, that somehow the situation had been allowed to develop whereby District Five ended up with the most un-

paved roads, but isn't it a fact that you had at-large elections for the county commission now in this county for the last twenty-four years? A. Well, the thing about it, I think the districts were set because of the population in each district and not, you know, based on roads in each district. This is they way –

[1488] Q. Do you understand we're trying to get at your reasoning on why you think the at-large system is better than the district system? A. Well, as I pointed out, I feel that being able to have the people in my district tell the other commissioners that they, you know, vote on them too, not just me, that it might have an effect on, you know, setting up an equitable formula for road paving.

Q. Mr. Beck, in these hearings that the commission held on the question of the charter proposal isn't it a fact that a number of black citizens as recorded in the minutes presented to this Court of those hearings appeared before you and urged the commission to leave in the district elections that the charter study committee had proposed? A. At some of the hearings?

Q. Yes, sir. A. I don't remember any specifically.

Q. You don't remember Mr. Crosswright there? A. Mr. who?

Q. Crosswright. A. Mr. Crosswright, no, sir.

Q. Do you remember Dr. Gainer, Dr. Ruby Gainer? A. Yes, I remember Dr. Gainer.

Q. Okay, you don't remember her urging you to [1489] include the single-member districts? A. I don't, not specifically, no. I do not.

Q. In your opinion, Mr. Beck, is it more difficult for a black candidate to get elected if he has to run at-large in

this county than if he were allowed to run from a district? A. I don't think so.

Q. What do you think are the chances of a black being elected in the current system?

MR. LOTT: Your Honor, I object to the question on the grounds that this suit is not about the electability of blacks. This suit is about whether the people that are elected are representing the black interests. And they've said over and over there's no point at all.

THE COURT: We're also going into a question of motivation and different things. I think it has some outside relevancy, Mr. Lott. All of these things are part of the picture, I'm afraid. I'm going to overrule the objection. Your may proceed to answer it.

A. What was the question again?

Q. Isn't it a fact that there's never been a black person elected to the county commission under the at-large system?

A. Not to my knowledge, no.

[1490] Q. Are you aware of the fact that there have been black candidates who have sought the county commission unsuccessfully?

MR. FLEMING: Your Honor, all this has been stipulated to.

THE COURT: Well, he's asking him about his awareness now, sir, and apparently he's just said he didn't know so we'd better, he may not have that much background. Do you know whether any black candidates have been elected to the county commission?

A. No, sir, I do, as I say –

THE COURT: If you were to assume the fact none have been elected and some have tried to be elected, would that have any effect on your opinion respecting their electability as such?

A. No, sir, it would not.

THE COURT: go ahead, Mr. Blacksher. You never really made any detailed study of the background in that respect, I'm sure, have you, Mr. Beck?

A. No, sir, my past background has been in education for twenty years.

THE COURT: Yes, sir.?

A. This is my first time in politics.

Q. Mr. Beck, if we told you that there was evidence already in this case that indicated that there was [1491] racially polarized voting in this county, that no black had ever been elected to the county commission or to the school board or to any other countywide local office under an at-large system, and that black citizens were bringing this suit to seek a change to district elections to give them an opportunity to express their preferences at the polls, in light of that would you consider that to be in any way, in your decision to oppose the district elections actually proposed by your charter study committee? A. No, as I pointed out earlier I felt like that the countywide concept would enable me to serve the county better in just the example that I pointed out.

Q. Did you read the charter committee's rationale supporting its decision to suggest changes to single-member districts? A. Yes. I read the proposals that we had, that we had to vote on there, but again, sir, basing it on my knowledge of going out and meeting the people in my district is what I'm basing my opinion on.

Q. What black citizens in your district indicated to you that they preferred that you strike the single-member district proposal from the charter government draft? A. Mr. Lawrence Green, for one, believes that the countywide election is better.

Q. Yes, sir, we've had Mr. Green mentioned before. [1492] Who else? A. I don't know of any other specifically that I, you know, know.

Q. You're telling us that you don't recall a single black person urging you to keep the district elections in? A. As I pointed out, Mr. Green had talked to me.

Q. You say he wanted at-large elections? A. The at-large elections.

Q. You don't recall a single black person urging you to vote to keep the single-member districts in the charter proposal?

THE COURT: Well, he just said Mr. Green, didn't he?

MR. BLACKSHER: Yes, sir, but Mr. Green, he said, wanted the district elections stricken.

THE COURT: He wanted single-member district elections.

MR. BLACKSHER: No, sir, he's testifying that Mr. Green wanted at-large.

THE COURT: He wanted countywide. I see. Excuse me, yes.

A. I don't remember anyone coming to me and asking me, you know, to keep, to go, you know, keep a [1493] district election. No, sir.

Q. Who else did you ask in your district among your black constituents besides Mr. Green? A. I didn't ask him. He, you know, he made his –

Q. I thought you said you went out amongst the people in your district? A. I do. I did and I still do.

Q. Aside from Mr. Green who else, what other black constituents did you speak with? A. Specifically on the charter, on the single-member districts?

Q. Yes, sir. A. I don't know of anyone that I spoke to.

MR. BLACKSHER: Okay, thank you.

THE COURT: You had a charter commission you all appointed recommending to you otherwise but in talking, going around to people there you didn't seek to get expressions of opinion from your people about that charter commission; you made up your own mind about it without consulting people outside your constituency, in your constituency?

A. Well, the people in my district when I was able to talk to them about being able to vote on all county commissioners, this is what they agreed that they [1494] would like the opportunity to vote on. I mean the blacks –

THE COURT: You did make some inquiries?

A. Yes, sir.

THE COURT: Among your constituents, and when you say that you talked about your district, you mean your residence district? That's where you made inquiry?

A. Not just in that district.

THE COURT: You made some outside of that as well?

A. Yes, sir.

THE COURT: All right, sir.

MR. LOTT: Your Honor, I have three short questions on redirect.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. LOTT:

Q. Mr. Beck, did the filing of this law suit have any influence or have any bearing on your decision to allocate the paving moneys for Welcome Circle, Quintette? A. No, sir, it did not.

Q. During your conducting of public hearings on the charter government how many people would you say spoke at the public hearings, overall in the public hearings? A. Very few. I don't know just how many people [1495] spoke, really, but we would have, you know, fifteen or twenty at each meeting. That's an estimate.

Q. Fifteen or twenty at each meeting? A. Yes.

Q. Over ten meetings. Were these publicly announced hearings? A. Yes, sir.

Q. On the method of changing the whole form of county government? A. Yes, sir, they were advertised as public hearings and published in a newspaper insert in a pamphlet booklet on the charter proposal.

Q. Mr. Beck, were you aware that a black person had ever won the Democratic Primary for a countywide race? A. I thought Mr. Jenkins had.

Q. Did that play any part in your opinion that a black person could get elected in the county? A. The question again?

Q. Did the fact that you knew that play any part in your decision, in your opinion that a black person could be elected in Escambia County? A. Yes, it did.

MR. LOTT: No further questions.

THE COURT: Let's see, he was defeated by —

[1496] MR. BLACKSHER: Mr. Jenkins beat Mr. Sanders, the college student.

THE COURT: Mr. Jenkins defeated who? That was in the primary election?

MR. LOTT: That was in the Democratic Primary, yes, sir.

THE COURT: And what happened in the general election to Mr. Jenkins?

MR. LOTT: He was defeated by incumbent Republican Leeper.

THE COURT: he was defeated by Republican Leeper. All right, sir. You may step down. I started to excuse you from attendance but you're a party defendant so I don't have to tell you that, but anyhow you may step down now, Mr. Beck. A. Thank you, Your Honor.

TESTIMONY OF KENNETH J. KELSON

MR. LOTT: We call Mr. Kenneth Kelson.

KENNETH J. KELSON,

called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOTT:

Q. Your Honor, this is Kenneth J. Kelson. He's a county commissioner from District Two and presently sitting on the Board of County Commissioners of Escambia [1497] County Florida. He's fifty-six years old, self employed, owner of Florida Electric Company. He resides at 1600 West Cypress Avenue. Mr. Kelson, are the facts I just related true and correct? A. It's true.

Q. Mr. Kelson, what year did you first run for county commissioner? A. The first time I run for county commissioner was the year 1970.

Q. Okay, in that election I believe you had previously been a city councilman for a number of years. Is that correct? A. Yes, I resigned from the city council. I was a city councilman from 1959 through 1970, July, 1970.

Q. Who were the candidates in 1970 that you ran against? A. There was Sherman Barnes, Mr. E.S. Cobb and Reed, John Reed.

Q. All right, sir, were you successful in that election? A. No, I wasn't. I come in third in a four-man race.

Q. So you were not in the runoff either? A. No, sir.

[1498] Q. Okay, when did you next run for county

commission? A. The next time I run was in the year 1974.

Q. Okay, who were the candidates in that election? A. That was Sherman Barnes was the incumbent at that time, and we had several other candidates in there but I don't remember their names.

Q. Okay, what were the results of the primary election? A. Well, Sherman beat me very badly in the primary but I was the second runner-up to him so we had to run it off in the runoff.

Q. All right, sir, in your campaign for county commission did you have any black persons who participated in your campaign or were interested in your campaign at all? A. Yes, Lawrence Green was in my campaign and you had a lot of people that got involved in the campaign, just coming by, volunteering, picking up literature, cards, whatever they could do to help.

Q. Were any of these people who were volunteering in picking up cards or campaign material black? A. Yes, some of them were.

Q. Did you make any kind of effort to determine [1499] who was coming by, picking up this stuff, passing it out? A. No, sir, I didn't. I just left it open for any body that wanted to pick up literature, to pick it up.

Q. Okay, what was the result of the runoff in your campaign against Mr. Barnes? A. The final result was I beat him by two hundred thirty-two votes.

Q. Two hundred thirty-two votes? A. Yes, sir.

Q. Okay, during that election did you actively solicit and campaign for votes in black areas and appear at rallies? A. Yes, I was a campaigner that went where I

was invited. Especially I was at a rally at Magee Field. That's on Alcaniz and Cross.

Q. Was that largely attended by blacks? A. Yes this was a rally put on by the black, a black organization, and I can't recall the name of it.

Q. Do you feel the black vote was a significant contribution to your election in 1974? A. Yes, sir, as far as I could tell Sherman and myself about split the black precincts. It was not overwhelmingly for me or him either one.

Q. Mr. Kelson, you were chairman of the Board of [1500] County Commissioners at the time the county considered the charter for the county as recommended by the charter study committee, is that correct? A. Yes, sir.

Q. Would you briefly describe to the Court how the commission went about considering the recommendation of the committee.? A. Well, to start off with, you know, the commissioners tried to stay neutral in the election where we could probably have what they call a fair election if people wanted charter government, we'll let them vote it in. So we conducted these various hearings all over the county, which was a very poor turnout by the citizens of all areas. So at the conclusion of the hearings we come up with the document that we put on the ballot for the election by the people.

Q. All right, that final document contained a provision for countywide election of county commissioners. Was that consistent with the general, the recommendation of the charter committee? A. No, your charter committee was split on the recommendation of the charter that was submitted to the Board of County Commissioners.

Q. The majority report contained –

[1501] A. The majority report contained the district voting.

Q. Did you vote to change that back? A. I sure did.

Q. What was your reasoning? A. The simple reason, I feel if you run countywide you represent all the citizens of Escambia County, not just a district.

THE COURT: Well, if the law provided it, you would be doing it as a matter of law.

A. Yes, sir.

THE COURT: You're talking about as a practical matter if you run otherwise you simply can't do it?

A. Your Honor, you can do it, but I don't believe – if I was working in the district I would work in that district.

THE COURT: Well, from some testimony I've just heard you all still kind of split it up into districts and each of you looking after your districts and making decisions.

A. No, sir, not to my opinion.

THE COURT: Well, you heard it.

A. Yes, sir.

THE COURT: Do you agree with what Mr. Beck told me?

[1502] A. No, sir, I don't. I don't work that way.

THE COURT: You don't go out in your district and help select what roads to be paved and that kind of thing?

A. No, sir, I do not. When I was elected a commissioner, I asked engineering to send an inspector into my district and not any particular roads but make a list of what was needed in District Two.

THE COURT: I see.

Q. Mr. Kelson, do you feel that the interest of black citizens in Escambia County could safely be ignored and their request for county services be ignored and a county commissioner act with impunity and still be elected in Escambia County? A. No, sir, I don't think you could ignore not only black people but anyone and I don't think you should as an elected official.

Q. Do you feel that you represent adequately the interests of black citizens of Escambia County? A. Yes, I do.

Q. On the Board of County Commissioners. Mr. Kelson, as a county commissioner have you actively supported any black organizations that the county sponsors or any organizations that the county sponsors that aid predominantly black interests? [1503] A. Yes, I'm member of the CAP Agency. I serve on that particular board.

THE COURT: What is that?

A. CAP.

THE COURT: CAP?

A. Yes.

THE COURT: What is that? Civil Air Patrol is the only thing I know.

MR. LOTT: For the record it's the Community Action Program.

A. Community Action Program. We've got so many abbreviations.

THE COURT: Thank you. I can understand that, sir.

Q. Do you know Mr. Tony McCray? A. Very well, sir.

Q. Is he a black citizen of Escambia County? A. Yes, sir.

Q. Have you as county commissioner worked with him closely in any project? A. Yes, sir, in the POCD.

Q. What is that organization's function? A. Let me think and I'll give you the name of that one. That's People Organized for Community Development.

Q. Is that a neighborhood improvement program? A. Do what?

[1504] Q. Is that a neighborhood improvement program? A. Yes, it is. It's mainly in your downtown section area, that section of Escambia County.

Q. Mr. Kelson, you mentioned in your runoff election that put you in the county commission the difference between you and your opponent in the runoff in the Democratic Primary, the difference was two hundred thirty-two votes. Was there any Republican opposition in the general election? A. Yes, it was. We had one person qualified in the general election. I think I beat him around twenty-seven thousand votes to twelve thousand votes in the general election.

Q. Okay, during the Democratic Primary do you feel that the black vote could have swung the election to the other side or changed the outcome of the election? A. In the primary election?

Q. Yes, sir, the primary runoff. A. It could have.

THE COURT: You mean in the runoff? Is that what you're saying?

MR. LOTT: Yes, Your Honor.

A. In the runoff election.

MR. LOTT: Yes, Your Honor.

A. Yes, I think it could have.

[1505] MR. LOTT: Okay, no further questions of this witness.

THE COURT: Cross examination?

MR. BLACKSHER: Just one second, Your Honor.

CROSS EXAMINATION

BY MR. BLACKSHER:

Q. Do you think the white vote could swing an election, Mr. Kelson? A. Not for me it wouldn't.

Q. What? A. Not for me it wouldn't.

Q. It couldn't possibly swing it for you? A. No, I always depend on all citizens to elect, not just white people.

THE COURT: You just testified in a particular situation a black vote could have swung it. It's equally true a few more whites voting for you would have swung it. That's all you could have meant. A. What I meant, Your Honor, if you check the precincts –

THE COURT: If no more white voters voted for you, rather, if less whites had voted for you or some blacks voted against you it could have changed the result. In any close race in this county a swing vote of whites or blacks could change the result because we have enough black [1506] or white voters. A. Yes, sir.

THE COURT: That's about all you're saying, isn't it?

Q. I want to go back over something you said in regard to the charter government proposal and the proposed single-member districts. Didn't you testify just now that

there was a minority report from the committee which proposed at-large elections as opposed to the single-member districts in the majority report?

A. No, sir, they just opposed the charter as proposed to the commissioners, it was my understanding.

THE COURT: They opposed what, sir?

A. They opposed the charter as submitted to the commissioners, the two members of the charter study committee.

Q. All right, well, let's set the record straight because I got a different inference from your direct testimony. There wasn't any minority report of the charter study committee that proposed at-large elections as opposed to the single-member districts? A. No, sir. No, sir, not that particular one.

Q. The committee as a whole proposed single-member districts, right? A. The majority of that committee, yes, sir.

[1507] THE COURT: Weren't there two reports there?

MR. BLACKSHER: Yes, sir.

THE COURT: You're going into that. Go ahead.

Q. Yes, sir, I'll give the witness the reports that are already in evidence from the charter study committee report. The first one is marked 98 and it was the majority report submitted by the first committee. You remember there were two committees? A. Yes, sir.

Q. The second one is marked 99 and it's the minority report of the first committee. And finally the third one is marked 100 and it's the only report that was submitted by

the second committee. Now I just want to clarify whether or not there was even a single person on either one of those committees that proposed at-large elections. A. Well, I just assume if you have a report from some member of that committee that they didn't approve the report as submitted the first time.

Q. Well, if you'll look, I'll tell you what, look at that document in the middle marked 99. That's the only written minority report we have in the record, Mr. Kelson. Now look on the second page at the top and see what it says. The second page. That was the one submitted by Mr. Brosnaham, I believe. Correct me if I'm wrong. [1508] A. Yes, by Brosnaham, Mr. Brosnaham.

Q. Brosnaham, excuse me, I mispronounced it. Doesn't it say at the top that the minority is proposing five single-member districts? They don't even propose the two at-large seats that the majority proposed. A. Right, on their report. The only thing I knew, they objected to the original as submitted to us.

Q. Well, they objected to a number of things? A. Yes.

Q. But that wasn't one of them, was it? A. No, sir. No, sir, that wasn't.

Q. Okay. So once again what was your reason in the face of this proposal by your own committee for voting to change or to keep at-large elections rather than to change to single-member districts? A. I just felt that I can represent the people better at a countywide election.

Q. You could? A. Yes, sir.

Q. Okay, tell us why you felt you could represent whoever it is you wanted to represent in a countywide elec-

tion. A. For the simple reason if you're in a district I think you'd have more of a tendency to work with that district and that's all as far as I'm concerned. I just felt [1509] that if you were responsive to all the citizens of this county you're going to be responsible to them when they call you for anything that goes on in the county.

Q. We understand that argument, Mr. Kelson, and I guess you would acknowledge there's an argument on the other side that people representing just one district are going to have to deal with the other representatives as well, isn't that correct, just like a legislature does? The legislature manages to function somehow even though they are elected from separate districts throughout the state. They have to deal with each other, right? That's compromise. So there's two sides to that, right? A. That's true.

Q. Okay, sir. Now, were you aware of the fact that there were black citizens who were urging that the county commission keep the proposed change to district elections? A. The only ones I can remember is the ones at a meeting at the health center when we had several appear there.

Q. And they asked, they urged you to keep the district elections in the proposal as suggested by the study committee, correct? A. That's true.

[1510] Q. Are your concerns, what I want is to get you to tell us, explain to us how your political science concerns about how well you represent someone in an at-large system outweigh the concerns of a minority group who feel they're being shut out of the political process by the at-large elections. Which is more important in your mind? A. I don't feel nobody is being shut out as far as county government is concerned.

Q. Well, it's a government that blacks have been shut out of the county commission so far as being elected. That is something you can't deny, isn't it? A. No, sir, but I was shut out in 1970 too, if you'll bear in mind, and to me I was one of the most popular politicians in the Pensacola area at that time.

Q. Yes, sir, and if we put your batting average up over time I guess you'd be proud of it, wouldn't you? You did make it eventually. A. I made it because I went and tried and I learned something in the first election. I wasn't ready to get out here in a countywide campaign and I found this out in a hurry.

Q. Blacks have been shut out altogether, isn't that correct? A. I don't think so. Mr. Hollice Williams has been [1511] elected time after time.

THE COURT: He means on the county commission. As far as you know blacks have never been elected to the county commission, is that correct, Mr. Kelson?

A. No, sir, the only one I ever remember running is Mr. John Reed, who ran in the race with me, and he polled five thousand votes.

Q. He ran fourth at that time?

A. Yes, sir. There wasn't but four in the race.

MR. BLACKSHER: I think that's all.

THE COURT: Any redirect?

MR. LOTT: One question.

REDIRECT EXAMINATION

BY MR. LOTT:

Q. Commissioner Kelson, isn't it true that the decisions with respect to charter government and the change in

the committee recommendations all occurred after this law suit was filed?

A. That's true.

MR. LOTT: No further questions.

THE COURT: All right, sir. You may step down, sir, Mr. Kelson.

A. Thank you.

THE COURT: I've been telling them they're excused but these defendants are heading out. It's about time to [1512] take another break, I imagine, about a ten minute break. We'll take about a ten minute recess.

(Recess)

(Open court)

TESTIMONY OF CHARLES DEESE, JR.

MR. LOTT: Call Charles Deese, Jr.

CHARLES DEESE, JR. called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOTT:

Q. Your Honor, this is Charles Deese, Jr. He lives at 8500 Sharron Lane. He's a lifelong resident of Escambia County. He's forty-five years old. He's self employed in the business of residential design and general contracting and building. He's a member of the West Florida Home Builders Association. He's presently a county commissioner from County Commission District Five on the Board of County Commissioners of Escambia County Florida. The statements I've just made to the Court, are they correct, Mr. Deese? A. Sir?

Q. Are the statements I made to the Court correct? A. No, sir, it's District One.

Q. I'm sorry, excuse me, District One.

[1513] THE COURT: It's correct otherwise?

A. Otherwise correct.

Q. Mr. Deese, when did you first run for the county commission? A. I first ran in 1972 and was unsuccessful.

Q. Did you reach the runoff? Did you run in the Democratic Primary? A. Yes, I did.

Q. Did you reach the runoff? A. Yes, I did.

Q. Who was your opponent in the runoff? A. Mr. Albritton.

Q. And you were defeated in 1972? A. That is correct.

THE COURT: You were defeated in the runoff, Democratic runoff?

A. Yes, sir.

Q. When did you next run for county commission, Mr. Deese? A. In 1976.

Q. Who were your opponents in that election? A. Bill McClellan, Raymond Lee, Herb Van Dyke, Harry Ham, Mr. Albritton, the incumbent, and myself. Six.

Q. What was the result in the Democratic Primary? A. In the Democratic Primary I was the, out of [1514] the six I was the front runner and then the runoff in the Democratic Primary, I was successful against Mr. Albritton.

Q. Mr. Albritton was the incumbent at the time, is that correct? A. That's correct.

Q. What kind of margin of victory did you have in the election? A. I believe Mr. Albritton's vote was, total vote in the runoff was eighteen thousand two hundred forty-six. My total was twenty-nine thousand nine hundred thirty-one.

Q. Okay, during the conduct of your two campaigns did you consider the black vote to be an important factor in the success of your election in 1976? A. Yes, sir, I did.

Q. Did you have any black citizens who assisted you in your campaign efforts? A. Yes, I did. Would you like the names?

Q. Please, sir. A. Okay. Mr. Lawrence Green took some of my literature and passed it out in the community. Mr. Gene Brown and Mr. James, I'm sorry, not James

Walker, I had a campaign meeting at Woerner's Restaurant some seventy-five or eighty people attended. I had approximately ten blacks [1515] attending that meeting. They took some districts to work and some literature and we all worked successfully together. During my campaign I had three blacks: Willie Mae Jackson, James Royster and Mrs. Elmore Benjamin, on the radio with campaign information. I also had Mr. and Mrs. James Walker doing telephone calling for me through their church efforts.

Q. Were they black citizens? A. Yes, they were. I'm giving you the names of the blacks at this time, if you would. I had a Mrs. Rafael Greer, Mr. Rafael Greer said he would ask his wife to do the telephoning for me, which I assume she did. Mr. and Mrs. Gene Brown were also heavy workers in my campaign. Reverend Callaway, I discussed the campaign with him and some of my other supporters discussed it with him and he was working for me. Mr. Elmore Benjamin also was very active, probably the most active of all the workers in my campaign in the black community, taking me to different functions in the black community.

Q. Okay, tell me about the functions and rallies and other public appearances you made in your 1976 campaign. A. Well, of course we've already discussed in previous testimony the Democratic rallies throughout the [1516] county. I attended all of them. Some of my black people attended these rallies also to assist me and pass out information. I went to the Royal Entertainers Club on Alcaniz Street on two occasions at their invitation. I attended a meeting at a black church on Gulf Beach Highway at their invitation and discussed my candidacy with several of their members. I went to, attended a black sorority meeting at the Sheraton downtown.

Q. Do you feel that the black voters in Escambia County were an important element in your overall constituency that resulted in your election? A. Yes, sir, I had everyone from one end of the county, black and white, working for me, I feel like, and I had a good working organization.

Q. All right, sir. Let me draw your attention for just a minute to the proposed charter that the Board of County Commissioners considered last year and the recommendation of the charter study committee to the Board of County Commissioners. Would you please describe for the Court the consideration the board gave to the charter proposal and how they went about considering it. A. Yes. The board was presented a majority and a minority report on the charter. At a later date a committee was set up to restudy the charter proposal and [1517] then present to the board. Because I was one of the newest commissioners at that time I was quite interested in just exactly what the charter contained, what it was all about, things of this nature. So I was placed on the committee to go over the charter word by word to see what needed to be adjusted here, there and yonder before giving any final presentation.

Q. Okay, the board, I believe, in previous testimony has indicated, it was indicated that the Board of County Commissioners changed the recommendation or did not accept the recommendation of the charter study committee to go to single-member districts but instead retained the present general at-large election of county commissioners countywide. Would you explain to the Court your reason behind supporting that. A. Yes, I would. The board, after we received the recommendation of the committee, the board then went over each of the points basically, went over the different points and chose various

and sundry things in the presented charter that were to be, upon their opinion, would be recommended to be changed. One of these proposals, and there were quite a few, but one of these proposals was to stay with the same type of countywide voting because it represented, each person was then representing all the people of the county rather than just their private districts, [1518] and on the opinion there it was possibly that the individual districts would go back to the individual little kingdoms where you would have individual commissioners having his own little works and not being receptive to anything else that went on anywhere else in the county.

Q. Okay, what was the issue on which you campaigned in 1972 and 1976? A. In 1972 basically, and in 1976, we had, as you know, I was running against Mr. Albritton and there was quite a bit of dirt road politics as such where the expression there came about where we had a one to one basis, individual commissioners one to one to the constituents, where we needed a commissioner that was more responsive to the total number of people rather than just the district. It was also called pothole politics, it's been referred to in several editorials and things of this nature. I campaigned that the people should be getting fair representation and that each commissioner should be responsive to the people of the county and also that there would be no political deals made and things of this nature. I was very much opposed to any back room politics, as another word, cliche' being used.

Q. How did the decision to retain at-large elections relate to your campaign theories? [1519] A. To my campaign what?

Q. Your campaign issues were dirt road politics and service to all areas. How did that relate to the particular

decision to retain at-large elections? A. Well, I think the people of this county want to have representation on the board and they want to be able to call any of their commissioners. I get calls from people all over the county. For instance Saturday morning at 9:00 o'clock I was in Molino. This is Mr. Beck's district. I was in Mr. Beck's district talking to some people there at their request and was taken up there by some other people who wanted to talk about it. Sunday at the church I was given a request to be taken care of. I don't know whose district this is. It's still in my pocket. I haven't taken it out. We get representations, we get calls from people all over the county. It's not just no one place or the other.

Q. All right, sir, I call your attention to the appointment by the Board of County Commissioners of the county budget and finance committee. Are you familiar with that? A. Yes, I am.

Q. Do you make any suggestions as to the persons to be included in that committee? A. Yes, I did. I made two suggestions. I made a [1520] suggestion and they were accepted. I recommended Dr. Donald Spence. He was accepted. And I also recommended Elmore Benjamin. He was accepted.

Q. Were these the only two recommendations? A. These were the only two.

Q. What are the races of those two gentleman? A. They 're both black.

Q. Mr. Deese, could you briefly describe the character and boundaries of your residency districts? A. Excuse me one second, if you could. Could I make an explanation, if the Court would, as to why I appointed those two?

THE COURT: All right, sir, go ahead.

A. The other members, some of them had already been appointed and they were still being appointed and I recognized the fact there were no blacks on there at this time so this is one of the main reasons that I appointed the ones I had, plus one of those was a very strong worker in my campaign and I knew what his thinking was and I knew how straight he was. So I did appoint him and then also Don Spence. I learned to appreciate him in the campaigning time. I had no knowledge of him otherwise. So I met him at the campaigns and I appreciated his attitudes.

Q. Okay, would you briefly describe for the Court [1521] the boundaries of your county commission residency district and the character of it. A. Yes. Basically I start somewhere near Pensacola High School and go over to Palafox and go north on Palafox to approximately Interstate 10 and then we'll go west along the centerline of Interstate 10 to Ashland Avenue, then turn north up Ashland Avenue to approximately ten mile road where there is a creek in there. Then it follows the boundaries of the creek west until it gets to Interstate 10 and then follows it on Interstate 10 on out to the west till we get to the Perdido River, which is Alabama. On the south, taking from Pensacola, Pensacola High, going west, we will go out through some portions of Brownsville and out Mobile Highway till you hit Saufley Field Road, turn left on Saufley and go west on Saufley to about Saufley Field and then it more or less follows a boundary line of a creek, something of that nature, across the back side of Saufley Field. It is divided up in farm land, suburban area and, as you know, something in the black and white mixed district down around Pensacola High School.

Q. Are there any unpaved roads in your district? A. I have approximately, well, I had approximately fifty miles of unpaved road in my district. That was [1522] before last year's paving.

Q. What was the paving, what did the paving program in your district consist of last year? A. Okay, the roads that I paved in my district, Wymar, the west side, I'm sorry, the east side of George Stone School going north, tying into Interstate Circle, going west and tying in and stopping at Pine Forest road. Now, this is a leader road that is, there are white residents living on this road but it's not heavily populated along either one of those roads, especially the Interstate Circle Road, but there are leader roads and tie-in roads that will take the traffic away from George Stone School. They represent some 49 percent of my paving. Then I paved Longleaf Drive from George Stone School to the east, tying in to Rolling Hills Road, which represents 48 percent of my paving.

Q. Okay, Mr. Deese, as to that 48 percent of your paving budget for 1977 as it relates to Longleaf Drive, what was the predominant character of the neighborhood in the area served by that road as far as racial composition? A. From George Stone School to the east we have approximately four white residents and then it goes on to the east and ties in and opens up the back side, the west side of the Wedgewood area, which is predominantly [1522] black. This gives the Wedgewood residents a west direction to go to the Navy Yard and west to go west and then north on Pine Forest to St. Regis or south from Pine Forest to the other parts of town and also gives them good access to George Stone School where a lot of their people go.

Q. What is the racial composition of the people that benefit directly and primarily from that 48 percent of your budget? A. Eighty percent black.

Q. Okay, you mentioned Rolling Hills Road. We had some testimony about this earlier in the trial. Are you familiar with any complaints that have been made to you or to the Board of County Commissioners concerning

county commission requests for services in Rolling Hills Road? A. Yes, sir, I have, and I'll be glad to go over these, if you would like. I will give you, for instance, I have five reports here from a Reverend Ford on Rolling Hills Road, about six. These were taken care of immediately. I have here starting 10/11/76 from Mr. Maxwell, one of the plaintiffs, "Request grading road and filling holes," on 10/11/76. This was taken care of and dated 10/12/76. I have from Mr. Maxwell dated 6/21/77, request to grade the shoulder of the road and also repair road. This was taken care of on 7/20/77, "Repaired road, grass shoulders as requested." I have a request from Mr. Maxwell, 9/16/77, request to put dirt on the north end of the road and also round the road and repair it to mail box, and the request states that, "Put dirt on the road and graded." I also have a memorandum that I attached to this to Mr. Mooney, Executive Director, and I'll read it. It says, "As per attached copy of work request and response of Mr. Maxwell, came in this morning not to complain about the work but wondered if the work had been inspected to see if it had been done properly. Also was concerned about the lack of coordination between the road department." And we'd been getting complaints along the same lines. Rolling Hills Road again, October the 10th, Mr. Maxwell, request of the same nature. January 1, '78, Mr. Maxwell requesting grade the road. This was on 1/9. The road was graded on 1/13 per request. Mr. Maxwell requested February 3rd, '78, "Road is washed out, needs crowning, filling and grading." On February the 10th the road inspector's investigation said that they cut the mud off the road and leveled up the same. On February the 13th, and this came from Reverend Ford, I've got it mixed up in here, requesting road repair, the same road, on the 13th of May; it said, "The crew went out on the 13th and made a mess. Please check and correct." The request was,

[1525] it was repaired as per above request. Mr. Maxwell on February the 15th requested put swale at each side of the street, crown and grade the road, repair at the mail box, road foreman to contact Mr. Maxwell. The board, it was signed off by the road supervisor that it was just completed –

THE COURT: Instead of going all through these, they speak for themselves. Put them in evidence and he can save time in his testimony. How many more of these do you have, Mr. Deese?

A. Your Honor, I have a bunch of them. We can take care of them in a day or two.

THE COURT: Why don't you put them in?

A. They're basically the same.

MR. LOTT: We move at this time for their admission, if there's no objection. They weren't on our exhibit list.

THE COURT: We can go over and over these things.

A. Yes, sir.

THE COURT: Do you have any objection to them coming in this way? They speak for themselves.

MR. BLACKSHER: I think I understand Your Honor's concern but I think in fairness if we'd had the opportunity to see these documents before trial we could have checked behind them to see what was going on and be prepared to [1526] respond to them.

THE COURT: Mr. Deese, go right ahead, sir.

MR. BLACKSHER: But, Your Honor, I'm as concerned as you if we're going to go through all these. We merely request the opportunity to come back and cross examine later, if we may.

THE COURT: Well, I don't know what you want me to do.

MR. BLACKSHER: If you're going to put them in evidence, give us –

THE COURT: Since you're objecting to it this way I'm going to let him go right on through and you can cross examine. Mr. Deese, I'm sorry I lost this time. You go right ahead.

A. Thank you, Your Honor.

Q. Mr. Deese, you may continue to try to summarize, if you can.

A. Sir? I'm sorry.

Q. You may continue, but summarize if you can.

A. All right. I'm sorry. I have a letter here from mail delivery service to Mr. Maxwell stating that service there was going to have to be discontinued due to the fact that the road was in the condition that it was in. The next day, I believe it was, after this date, we had a meeting of the county commission. Mr. Maxwell and [1527] Mr. Stokes, the plaintiffs, appeared before the board and requested that something be taken care of immediately, especially due to this letter, which I did submit to the board. And at that time the board agreed that they would authorize special work day to be done and that was on Friday. Now, the road camp does not work on Friday. We work four ten-hour days, so on this day of Friday the work crews came out at an overtime pay and took care of the problem that existed at the location. February the 22nd we have a similar situation. February 29th it was taken care of. March the 3rd, the 6th, we have a similar situation. March 17th it was taken care of. Now we get into Mr. Stokes' requests and we have a similar situation, Your

Honor. Basically these things are all the same, daily reports, requests, daily returns, daily taken care of.

THE COURT: Maybe we can stop on that and that gives Mr. Blacksher enough to cross examine on.

MR. BLACKSHER: Yes, sir.

THE COURT: All right, sir, go ahead, Mr. Lott.

Q. Okay. Mr. Deese, what was the race of the persons who were requesting these services from the county? A. These services?

Q. Yes, sir. A. These were from the predominantly, from the [1528] black community, and it was from Mr. Stokes and Mr. Maxwell and Reverend Ford, all of the black community.

Q. Okay, and how many of those requests have not been responded to with the requested action? A. Here's my folder of the pendings on Rolling Hills Road and there it is and this request was made by Eugene Brown and the request was to repair the shoulder of the road and the cost was about thirty-five dollars and this would be, this was dated May the 3rd and it was taken care of on May 9th. I just found this out. So it has been taken care of also.

Q. So there are no outstanding requests that haven't been responded to, is that correct? A. As of Friday afternoon there are no responses, no requests that we have not responded to immediately.

Q. Mr. Deese, about how long ago did these requests start? A. Well, I can look back on my list and give you basically the earliest date. Now, bearing in mind I'm a new candidate in office as of '76. I have the first one here, 10/11/76. Now, that is –

THE COURT: That shows you how far back they went?

[1529] A. That is prior to my taking office but these dates have been –

THE COURT: Okay, the first one you have is October 10th, 1976?

A. Yes, sir.

THE COURT: Go ahead, Mr. Lott.

Q. Mr. Deese, did the fact this law suit was filed have anything to do with the county's response to those requests after the date of initial litigation? A. No, sir. In fact it was about a week and a half ago that I realized that Mr. Stokes and Mr. Maxwell were one and the same. I didn't check them with the suit and I have no reason to worry about it one way or the other because I treat all the same.

Q. Mr. Deese, do you consider responding to requests from black citizens as well as white citizens a responsibility and a keeping of your campaign promises? A. Yes, sir. I took an oath of office to serve the people of the county, not to serve the white people.

Q. Do you feel that you represent fully the black interests as well as the white interests of the citizens in Escambia County? A. I do my very best to do this and I hope that they feel the same way.

Q. Do you feel that you could safely ignore in a [1530] campaign or in an election the needs of black constituents and feel comfortable about going back to the polls? A. Absolutely not.

MR. LOTT: No further questions.

THE COURT: Mr. Deese, if you took an oath in a single-member election you would still be taking an oath to serve the people of the county, not the people in your district. Could you comply with your oath in this situation and could you comply with it in that situation?

A. Your Honor, the only thing –

THE COURT: We have, we have the State of Florida with all our legislators; they serve the people of the State of Florida under their oath, and in a single-member election district you would take that same kind of an oath.

A. Yes, sir, but is it not true that maybe Bob Sikes feels a little bit more about Northwest Florida than he would South Florida?

THE COURT: Well, that's what you're saying but beyond that you would feel that a little bit more about your district right now because you talk about "my district and my roads" and you're only a resident in that district.

A. Yes, sir, that is correct. The district, my [1531] office handles the majority, it's a clearing office for the complaints and anything that comes in from that district. However, that doesn't mean that we don't go over in other districts, as I stated earlier.

THE COURT: You would in the other kind of election too. Another thing, haven't you and the county, under the law as I understand it in Florida you're supposed to be a policy-making body and you've got your people down there under you. You've gone to an administrator, have you not, as I understand it, some ordinance not too long ago, you all went through something and delegated and spelled out that you have an administrator. If you don't like him you get rid of him, but he's your detail man. Yet from what you tell me you take on details yourself. These people that come to you, you don't say, "Now, what you need to do is go down and talk to our people because they take care of the day to day details"? You don't do that?

A. No, sir, because the people of this county say, "I voted for you and I want to speak to you. I don't want to speak to your secretary, I don't want to speak to Mr.

Mooney, I don't want to speak to anybody but the commissioner I voted for." And therefore what are you going to do? Are you going to say, "I'm sorry, I'm a policy maker"? I represent everyone that comes into my [1532] office.

THE COURT: In other words you're not a policy maker in practice even though in law you're supposed to be in your judgement?

A. By law I'm supposed to be a policy maker?

THE COURT: That's what I thought you were supposed to be. We'll find out about it. I thought the Board of County Commissioners sat as a policy-making body and the details of the work went on with the staff. That theory is there with the school board. It's supposed to be policy-making with the superintendent being the administrator. I thought you all had the concept in law. Maybe I'm wrong.

MR. LOTT: Your Honor, under Florida law the county commission has historically been both a legislative and administrative body. To the extent they desire they may appoint an administrator to handle such duties as they deem desirable to appoint to him but under Florida law the county commissioners are both administrative and legislative. The only function that is separated as far as the government of the county is concerned is the judicial.

THE COURT: I see. But this board has recently tried to divorce itself more from administrative work and get more in the policy-making areas?

[1533] MR. LOTT: To the extent they adopted the county administrator's format. However, the county administrator's format permits the county to delegate as much authority as it sees fit to an administrator and retain as much as it sees fit.

THE COURT: I see. Well, that clarifies my thinking in that respect and that leaves you in that position.

A. Yes.

THE COURT: And that would be a reason you think you ought to stay on a general election even though you work in and out of a district and come back and forth?

A. Yes, sir.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. BLACKSHER:To sum up the county administrator ordinance that the county commission adopted, it delegated the authority to the county administrator hiring people and doing things in the central offices but the county commissioners retained for themselves the prerequisite of deciding which roads in their residency districts would be paved, is that right? A. Those roads are recommended by the commissioner and the engineering department because there's no way that [1534] I could take that, to give you a total recommendation on a road without the input from the engineering department, because they figure up how much it's going to cost. Now –

Q. Well, what I was saying, Mr. Deese, is whereas under your ordinance that Mr. Lott was talking about the commissioners can't go behind a decision made by whoever the administrator is to hire or fire somebody, that is not true with respect to roads; the county administrator doesn't decide where the roads are going to be built or repaired. That's something that you still participate in to a large extent, is that right? A. We make the recommendation to the board and the full board votes on which

roads will be paved. They are divided into districts because of the sheer working conditions of the road camp people.

Q. Well, how often does the full vote of the board overturn the decisions made by the individual commissioner about which roads in his district within the budget allotted to you will be paved? A. Any time you have a three to two vote.

Q. Well, I understand that the majority is three to two. Mr. Deese. A. Yes, sir.

Q. But I asked you how many times does that [1535] happen?

THE COURT: To your knowledge has it happened at all where one was overturned, a recommendation of a commissioner?

A. Not to my knowledge.

THE COURT: Since you've been there you don't remember it happening?

A. There was a recommendation that a certain road be paved in my district this past year. I did not desire to participate in it so another commissioner did pave that road in my district with his money.

THE COURT: You mean he made the motion?

A. Sir?

THE COURT: He made the motion it be paved?

A. Yes, sir.

THE COURT: But he knew you didn't want to make a motion for some reason?

A. No, it was not on my list that I was going to recommend.

THE COURT: I see.

A. So he added it to his list.

THE COURT: I see.

A. He paved it with his money. Thank you.

THE COURT: With his money?

A. His money.

[1536] THE COURT: There you go again. The money is to be spent in his district and money to be spent in yours. It's almost a single-member election concept in that thing, isn't it, Mr. Deese? It's hard to get away from it?

A. Well, if it were that way, Your Honor, I would think that commissioner would be very jealous of his area and would not want to spend money in my district. He'd hold his in his district.

THE COURT: Well, it could be. It might work out that way.

A. Your Honor, a long time ago we had those type things, little kingdoms.

THE COURT: I know you did. There's a lot of history in it. Go ahead.

Q. Mr. Deese, I need to understand whether the work requests you were reading with respect to Mr. Maxwell, Mr. Stokes, Reverend Ford, concern the same road. A. Yes, sir, that section they're referring to is a little over a block long.

Q. Well, I counted, I tried to count, I got something like seventeen work requests beginning in October of 1976 up through, well, you've got one that hasn't been answered there. Now, isn't that a little bit high incidence for one block needing repairs? [1537] A. Yes, I really believe it is. I think it's an imposition on their part to call for the

same thing to happen, both of them calling and getting exactly the same thing. When the road needs paving, when the road needs working, it appears all three of them get together and call. I don't know it, to be frank, and it appears all three call and we would have three requests. This is overtaxing the county personnel to have to have these working crews run out this way.

Q. Do you have indication there these requests were not well founded, the work didn't actually need to be done and somebody just went out there and looked at it and said, "It's all right," and turned around and came back? A. No, sir.

Q. So they did some work every time they went out there, right? A. They were in the process of doing the work while they were also being called for the next day's work.

Q. Well, I don't - A. The dates prove that.

Q. Pardon? A. The dates show that. They'll be working out [1538] there today to do yesterday's or two days ago's request and at the same time getting another request to do something else possibly.

Q. Well, have you done any inspection or asked your engineers to do any kind of investigation to find out what the general problem is with this road that it requires such constant upkeep and maintenance and why it's deteriorating so fast? A. Yes, we have. It is an area that is going down a slope. At the end of the road is a swamp. There is a spring that is on the east side of the road that is giving a lot of trouble. We have taken many truckloads or yards, we'll say, of gravel out there, which we normally don't put on the road, to try to get this water moving. I consulted with our road superintendent as to

what was being done. He said we needed some way to get the water across the road and still not mess up these people's property. Any time that it rains real hard it's a funnel area.

Q. How about paving? A. Be glad to pave it. We need some money to pave it with. We need some twelve thousand dollars to pave that section.

Q. I see. And that money is not available? A. At this time it's not available.

[1539] Q. Is there any money available for paving anywhere since October, 1976? A. Since October when?

Q. October, 1976. Has there been any money available for paving anywhere in your district? A. Oh, yes. I paved primarily the feeder roads, as I stated before.

Q. The high traffic roads? A. The high traffic roads, which is the other side of Rolling Hills Road, ties in, that carries these people to the area.

Q. And those roads you testified about are used primarily, among other things, by school buses? A. Absolutely. This is taxpayers' money we're tearing up the buses with so I'm trying to protect the taxpayers' money in the form of protecting buses.

Q. I think you also testified, Mr. Deese, that you were proud to have appointed Dr. Spence, and was it Reverend Benjamin? A. Elmore Benjamin.

Q. Elmore Benjamin. To one of the boards? A. That's correct.

Q. That you were mentioning, and I can't remember the name of it, and you said that you thought there was a

need to appoint black people because there had [1540] not been any on that board before. Is that what you said? A. This was a brand new board and it was in the process of being appointed.

Q. Okay, sir. Did you make that observation with respect to boards and committees generally appointed by the commission? A. I've had no reason to appoint anyone else.

Q. Well, are you implying by what you said about all the paving you've done in these black neighborhoods or the improvements you've done in these black neighborhoods by appointing blacks to a board and committee that your predecessor in office wasn't sensitive to or responsive to blacks and you were making up for that? Is that what your inference is? A. I didn't indicate anything about my predecessor.

Q. You're not saying then that you felt the need to do some catching up for black folks in your district? A. No, sir.

Q. So you haven't given them any particular preference over white people in your district? A. No, sir.

Q. And for the instances that you gave us of [1541] having prepared a road in a black neighborhood you could give us many others for having done the same thing in a white neighborhood, is that correct? A. Your percentages will prove that I paved 48 percent on Longleaf Drive, which serves, I paved 21 percent on one, 3 percent on another, a total of 100 percent. I had seventy-nine thousand two hundred seventy-eight dollars to work with.

Q. Those were throughways you're talking about, right? You're counting as a black area those residences in

and around a thoroughfare that has been paved to facilitate traffic from Pine Forest Road south and so forth, right? A. Right.

Q. All right. A. From George Stone School.

Q. Let me talk to you a few minutes about the charter study committee and the charter proposal, please. Isn't it a fact you were a member of the second charter study committee that was appointed by the commission? A. I've already testified to that fact.

Q. I'm sorry, I didn't understand that you were on that committee. A. Yes, sir. Now, wait a minute now. Don't get it confused with the majority and minority committee [1542] that formed the charter government.

Q. That was the first one, and you weren't on that one? A. I was not there. I was not even elected. I was on a committee that was to study the proposal and then come back to the commission with recommendations.

Q. All right, sir. A. And we did study that word for word.

Q. In plaintiffs' exhibit 100 is the report of that second study committee of which you were a member, am I correct? It was so identified my Mr. Tennant.

THE COURT: You were a member of that committee, Mr. Deese? That's what he's asking. A. Your Honor, I'm, the front of this thing confused me a little bit because there were two of these. I believe one of them did say majority report.

THE COURT: This is the second one. A. Do we have two of them just like this except one of them says majority report?

THE COURT: Can you look at that thing and see if you're a member? A. There are no names on it.

THE COURT: I think the testimony says that was a unanimous report.

[1543] MR. BLACKSHER: That's correct. The testimony Mr. Tennant gave - A. Okay.

MR. BLACKSHER: Was that there was no minority report from the second committee. What's marked as 98 is the majority report from the first committee and that looks something like that. A. Yes, sir.

THE COURT: This is the committee you served on? A. Yes, sir.

THE COURT: Are you finished with this?

Q. Yes, sir. Well, now, that committee report also proposed single-member districts, isn't that correct, Mr. Deese? A. I believe it did.

Q. Okay, sir, and you were a member of that committee? A. Yes, sir.

Q. And you didn't file a minority report, did you? I mean you were in favor of that proposal. That's what I'm getting at. A. I did not object to it.

THE COURT: Well, that being so, you agreed to that report as it went in but you voted otherwise on the commission? [1544] A. The commission, the thing that we voted on, on the report, we took the other report that he had –

THE COURT: Dr. Deese, all I'm saying to you, sir, is that Mr. Tennant had said this is unanimous. You say you didn't object to it so I suppose that report went to the committee as a report you approved. A. Yes, sir.

THE COURT: And it recommended single-member districts? A. Yes, sir.

THE COURT: On the commission, however, you voted otherwise? You did not vote for single-member districts? A. Your Honor -

THE COURT: Is that correct? A. We, if I could -

THE COURT: I'm just asking if that's correct, and then you may explain, of course. A. Yes, sir, it is correct. If I may qualify my statement.

THE COURT: All right, sir. A. When we voted, we made one vote and it covered a multiple of changes to this report. It didn't single out and vote individually on each thing it covered. One vote covered a multiple so I didn't single out and vote [1545] against or for the single-man district thing. It was a multiple of things that were changed.

THE COURT: It still remains you didn't feel strongly enough about the situation in your committee, at least, to come in and talk about it and file a minority report. A. No, sir.

THE COURT: Perhaps you don't feel too strongly one way or the other about the entire situation. Is that right? There are merits on both sides of it, is that what you're saying? A. Yes, sir, in this situation.

THE COURT: Merits on both sides, single-member or at-large? That's what you're saying. But you did change and vote - A. In the full vote.

THE COURT: How's that? In the full vote you changed that? A. Yes.

Q. Given the fact that there are merits to both sides from a political science standpoint, Mr. Deese, wouldn't

you be in favor of voting for that forum that gave minority groups such as the black citizens of this county the best opportunity for full representation? A. I'm sorry, I'm not a political science [1546] expert. I don't believe I could answer that. I have been elected to office but I'm not a political science expert.

MR. BLACKSHER: All right, sir.

THE COURT: Redirect, Mr. Lott?

MR. LOTT: Just one question to clarify something Mr. Deese testified about on cross.

REDIRECT EXAMINATION

Q. Mr. Blacksher characterized the road that you paved with 48 percent of the money and you had said was for the benefit of the blacks. Let me get up to the mike. A. Please.

Q. Mr. Blacksher had characterized as a thoroughfare road the road that you had testified was to the benefit of blacks. Does that thoroughfare road lead from a county road system directly into a predominantly black neighborhood? A. Yes, sir, it does.

Q. Does it exist on the other side in a thoroughfare style? A. It goes through the community and comes out on Pensacola Boulevard, which through the black community is basically paved all the way to Pensacola Boulevard but the [1547] west side of the Wedgewood area has no paved, had no paved outlet to the west for Navy Yard people, George Stone people or people going to St. Regis to work the back side, or the Southern Bell Telephone, which is on that west side, either. There was no paved access.

Q. Is it a thoroughfare road used principally for the benefit of the black neighborhood? A. Yes, sir. Well, I would say that blacks and whites will use it. It does create a good road to take the buses to the east from George Stone School area.

MR. LOTT: No further questions.

THE COURT: You may step down, Mr. Deese. Call your next witness, Mr. Lott.

MR. LOTT: We call Jack Kenney.

TESTIMONY OF JACK KENNEY

JACK KENNEY,
called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOTT:

Q. Your Honor, if it please the Court, this is Jack Kenney, who resides at 1199 Ellyson Drive. He's resided in Escambia County for twenty-three years. He's forty-eight years of age. He's self employed in the advertising business. He's the county commissioner presently serving in the Board of County Commissioners for [1548] Escambia County, residency District Four. Are the statements that I've just made to the Court true and correct, Mr. Kenney? A. Yes, they are.

Q. Mr. Kenney, when did you first run for county commission? A. Nineteen seventy.

Q. Who were your opponents in that race? A. The incumbent was W. A. Davis. The other Democratic opponent was Nathaniel Dedmond.

Q. Was this in the Democratic primary? A. Yes.

Q. What's the race of Mr. Dedmond? A. He's black.

Q. Okay, what was the result of the first election in the primary? A. I won.

Q. Was there a runoff? A. No, there was not.

Q. You received a majority of the votes? A. Yes.

Q. After the election did you have occasion to have a conversation with Mr. Dedmond concerning the election? A. Yes, we had several.

[1549] Q. Did he make any statements to you concerning his basis or his feeling for his defeat in the election? A. Only one.

Q. What comment was that? A. He said words to the effect, "My own people didn't support me."

Q. What did you take that to mean under the circumstances and context of what was said? A. I never have been able to really be sure whether he meant that the black community did not vote for him or the black community did not turn out to vote at all or in relatively small numbers.

Q. All right, sir. How did you conduct your campaign in 1970? A. It was basically a media campaign, primarily in the electronic media, since that was my area of recognition and expertise.

Q. Did you appear at any rallies or church congregation meetings which were organized for or for the benefit primarily of black voters? A. I appeared at all of the scheduled Democratic rallies. I don't believe that in the 1970 election, I don't recall that there was a rally set up by any specific black organization per se.

[1550] Q. Did you appear at any predominantly black churches to speak? A. Yes, I did.

Q. Did you have any black persons who assisted you in your campaign? A. Yes, sir, I did.

Q. Who were they and what was the nature of their support? A. They were mostly assisting me in the area of distributing pamphlets, information, introducing me to black groups such as churches. I don't recall that we had any telephone committee type of organization. It was not a formally organized campaign as such.

Q. Okay, now let's look at your campaign in 1974. Basically what kind of campaign was that? A. It was also basically a media campaign around somewhat the same issues and some of the issues that had come up in my four years previous experience.

Q. Did any black citizens in the county assist in your campaign in that election? A. Yes, they did.

Q. Okay, who were your opponents in that election? A. In that election the opponents were Harry Ham and Tom Bailey in the Democratic Primary and Christopher Henson, a Republican, in the general.

[1551] Q. Did you win the Democratic Primary on the first ballot? A. Yes, sir, I did.

Q. You defeated the Republican in the general election? A. Yes.

Q. What were the issues that you felt were particularly notable in the '74 election? A. I think the fact that I had at least made great strides toward following up and accomplishing the only real promise I made in terms of the first election and that was the establishment of a county-wide bus system. That was the primary thrust of that campaign.

Q. Okay, could you give the Court a brief history of the development of the bus and how it benefits the people of the county? A. The City of Pensacola had a management agreement with American Transit Company to run a bus system within the City of Pensacola. They found this no longer economically feasible so they dropped the bus system and for several months we had no bus system. I felt that government owed mass transit services to its people and campaigned on that basis and was thus appointed as chairman of a joint city-county-legislative delegation transportation committee and our charge was to investigate [1552] the possibility of establishing a county bus system. We proceeded with the presumption that such a system was needed and it was a government function, and how the best way to fund it was really our charge so we applied for federal funds from the Urban Mass Transit Administration for the acquisition of fourteen buses and the allied equipment. After the usual time for red tape and so on the grant was made and the buses were purchased and we started a county bus system under the auspices of the county and the city on a diminishing city bases.

Q. All right, sir, now you identify this as one of your campaign issues in '70 and 1974. Would you say that the fulfillment of that campaign promise was something you felt was necessary as far as your political future was concerned? A. Well, I operate on the principle that you don't promise anything you can't deliver and you'd better deliver everything you promise if you want to be reelected, so I feel it was vital.

Q. Okay, what is the characteristic makeup of the people who use and ride the Escambia County Transit System, if you can make such a generalization? A. Generally speaking I would say they are of the lower income bracket.

[1553] Q. What is the racial composition of those who use the Escambia Transit System predominantly? A. I don't think we've made any surveys to that extent. It would strictly be my own opinion and riding on the buses. It would indicate probably 75 percent black.

Q. How was the scheduling of routing determined as to where the buses would go? A. Basically it was determined in the areas where the lower income people lived or were trying to get to, taking into account requested routes by petitions. We had several, many, many areas, neighborhoods, if you will, that said, "We would like a bus system." We tried to run the buses there and are still running in many of them depending on the ridership and the availability of buses.

Q. Can you characterize the areas that are predominately served by the routing of the bus system? A. Well, I think that from the general downtown area it would be characterized as heading in the spokes of a wheel to and from the downtown area. We do run one route to the Naval Air Station. Generally speaking the rest would go to East Pensacola Heights, all the way out towards the Ensley area. We also have a bus that runs from Century to Pensacola.

[1554] Q. All right, sir, is this venture by the county a profit-making operation? A. No, sir.

Q. What kind of expense deficit is incurred by the county? A. I don't have the exact figures but I would estimate somewhere in the neighborhood of three hundred thousand dollars per year deficit.

Q. And what is the purpose of funding the deficit as opposed to increasing the fares? A. There is a sort of a diminishing return. We found that if you increase the

rates, the fare rate, beyond a certain point, you decrease the ridership. And therefore increasing the rate does not increase the revenue. In fact it usually decreases it. We tried to hit a happy medium.

Q. Does the bus system operate solely within your residency district as a county commissioner? A. No, sir.

Q. Does it serve predominantly your area or residency district? A. No, sir.

Q. To what do you attribute the concern of the bus system as a commissioner from your residency district since it doesn't serve particularly your area? A. [1555] Well, I have been elected on a countywide basis and I feel it's my responsibility to serve the people of the county wherever they may live.

Q. Have you particularly sponsored any other county projects that are outside of your own district? A. Well, I have one now that I'm working on now and have been for a year or so, the creation of an artificial reef which is actually in the water and I guess it would be the commissioner's district in the Santa Rosa Island area if it were in any specific district. This is a countywide effort to which I've devoted a lot of time.

Q. Going back to your election and the constituency that you appeal to, could you basically describe for the Court the importance you attributed to the blacks in your 1970 campaign and your 1974 campaign for county commission as far as a component in your constituency to win an election? A. Well, in 1970 I was a little naive about how you put together a political organization. I didn't have one per se but I did have volunteers, both white and black, who suggested they might help in a certain way. I gratefully took them up on this. This was a learning ex-

perience for me so that in 1974 I tried to organize in a better manner and went to leaders of the black community and [1556] said. "Do you find it possible to support me and I will appreciate that support if you think I've done a good job."I think that the contributions that they made, particularly in the 1974 campaign, were significant.

Q. Do you feel that as a county commissioner you've adequately represented the interest of black citizens in the county? A. I've certainly tried to.

Q. Do you feel that the black components of the constituency in the county could be safely ignored by you in a campaign and insure your election? A. I'm sure it could not.

Q. Are you aware of any particular projects by the Board of County Commissioners in the area of paving that have benefited the black citizens of the county? A. There is one in particular that I've been involved in just recently that comes to mind first.

Q. What is that? A. That's in the area in Cantonment, Welcome Circle.

Q. Were those funds that were appropriated by the Board of County Commissioners? A. They were funds from my paving district.

Q. In other words you used funds that were allocated to your district in the Cantonment area? [1557] Is the Cantonment area in your district? A. No, sir, it's not. If I might explain, my district is basically on the east side of the county near the airport. We do not have the amount of unpaved roads that some of the other areas do. And even though my percentage is lower than some of the others I usually can take care of the most crying needs of

that district and have some left over to contribute to some of the other commissioners where they need it.

Q. Are you familiar with the community development block grant program that the county operates? A. Yes.

Q. Do those funds come to the county without substantial effort on the county's part to receive them? A. No, there's substantial effort.

Q. Once they're received is there any requirement that they be allocated to any particular area or does the board decide what area will be benefited within the guidelines of the grants? A. It has to be within the guidelines of the grant.

Q. Mr. Kenney, the plaintiffs have made some contentions about the advisory boards and committees and number of blacks that are appointed to them. Could you explain what your experience has been with regard to [1558] appointment of blacks to advisory boards and committees? A. Most advisory boards in my experience have been appointed by individuals who have demonstrated an interest or expertise in a certain area. They have demonstrated this interest by civic work, by attending meetings, by actively showing this interest in a positive way. They come forth and, if not volunteer, at least show their wiilingness to become an active part of the community in terms of helping in an advisory way. Most of the advisory committees are made on that basis, of, "This persor has expressed an interest or desire to serve."

Q. Are you aware of any black citizen who's expressed an interest on being on such an advisory board or committee that has been refused? A. No, sir, I'm not.

Q. Mr. Kenney, there's been some testimony today

concerning the proposed county charter that was considered by the board's charter committee. Would you please explain how you voted as a member of the board and what factors you considered in reaching your decision. A. I voted for countywide representation. I voted for it basically on the premise that there are issues and problems that transcend district lines and perhaps did [1559] not exist, these problems did not exist in, prior to 1950 when the old road boards were in operation. The issues such as the transit system which I've just talked about in my opinion could not exist under a district vote where an individual commissioner, if he did have the idea that a transit system should be put in, would probably only be able to put it in his district, which would not be a transit system at all. The artificial reef is another thing. The water and sewer problem, the drainage problems that cover vast areas. Many of the urban problems that the county is faced with today it was not faced with several years ago. These problems in my opinion can not be solved without a countywide representation.

MR. LOTT: No further questions, Your Honor.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. MENEFEE:

Q. Commissioner Kenney, my name is Larry Menefee. I'm an attorney for the plaintiffs. Is Mr. Dedmond a respected member in the community? A. Yes, he is.

Q. Known for his truth and veracity? A. Yes, sir.

Q. Were you in the courtroom when he testified [1560] the other day? A. No, sir, I wasn't.

Q. Would you agree with his assessment that the black has little chance of election, that the present at-large system operates to exclude blacks? A. I can't entirely agree with that, no. There have been several cases where it's been a close race.

Q. All right, sir. Have you ever studied this statement that you attribute to Mr. Dedmond, have you ever studied the results of that election to try to gain some understanding of what he meant? A. Yes, I have, not in great depth. I studied it to the extent of finding out what sort of numbers he had and what sort of numbers I had. I'm not really that familiar with an individual precinct to say this all went for me and this all went for him. All I know is I got all the precincts.

Q. That was in 1970? A. Yes, sir.

Q. Mr. Kenney, our statistical analysis indicates that in the 1970 elections, though the black turnout rate was below the white turnout rate in virtually every election that year by a substantial margin the black rate as to the Dedmond-Kenney-Davis race was, how shall I phrase [1561] it, much, much, closer, much more equal to the white than in any other election run that year. The figures we have indicate a fall-off in the black participation of .39 in your race with Mr. Dedmond whereas other elections show black fall-off rate of .77, .51, .73.

THE COURT: I doubt if he knows what fall-off rate is. Maybe you better refresh us both. What are you suggesting those figures show? You're getting into statistical theory with him.

MR. MENEFEE: Yes, sir.

THE COURT: What's all this going to him about?

MR. MENEFEE: Your Honor, that in fact -

THE COURT: There's testimony that these figures indicate a certain thing. Now, that's what you're trying to get to, isn't it?

MR. MENEFEE: Yes, sir. Yes, sir, these figures indicate that blacks in fact turned out quite well for Mr. Dedmond.

THE COURT: Well, you brought that out. Now has he questioned that in any way?

MR. MENEFEE: Well, I'm trying to understand. He said that -

THE COURT: Oh, I see, yes.

MR. MENEFEE: As I understood what he said relating to Mr. Dedmond's statement that Mr. Dedmond was complaining, [1562] he didn't understand exactly what Mr. Dedmond meant.

THE COURT: You're talking about the statement that he says Mr. Dedmond told him they didn't support him.

MR. MENEFEE: Yes, sir, I'm trying to understand his interpretation of it.

THE COURT: Perhaps you should have been asking Mr. Dedmond about it. This was not his statement. It was Mr. Dedmond's statement. Have you made any statements about how well the blacks turned out to support you or Mr. Dedmond, Mr. Kenney? A. No, sir, I haven't.

THE COURT: I didn't recall any either.

Q. What's your understanding of Mr. Dedmond's statement?

THE COURT: His statement speaks for itself. He's already said, "I don't know whether it means they didn't turn out or didn't support him when they turned out.' I remember Mr. Kenney's statement. I think the matter you're going into now is more properly addressed to Mr. Dedmond, not Mr. Kenney.

Q. Does that statement have any meaning to you?

THE COURT: Don't bother to answer. He said it could have gone two ways, Counselor. I recall it, if you don't. You've pursued this far enough.

[1563] Q. Mr. Kenney, about how much money did you spend in your campaign in 1970? You said you ran a media campaign. A. I think it was around ten or twelve thousand dollars.

Q. And in 1974 approximately A. Probably about fourteen.

Q. Okay, sir, where did you raise most of those funds? A. Knocking on doors.

Q. Can you give us a rough breakdown as to how much you raised in the black community as opposed to the white? A. No, sir, I can't. I'm sorry.

Q. And soliciting votes in the black community, you said you contacted churches? A. Yes.

Q. Are black churches a leading institution or some of the primary institutions you solicited for campaigns in the black community? A. They were some of the leading institutions.

Q. What other institutions in the black community? you said you contacted churches? A. Yes.

Q. Are black churches a leading institution or some of the primary institutions you solicited for campaigns in the black community? A. They were some of the leading institutions.

Q. What other institutions in the black community? A. I was asked to appear at Abe's 506 Club.

Q. What is Abe's 506 Club? [1564] A. It's a night club.

Q. It's not a social, not a fraternity as such, is it? A. It's not a closed club. It's open to the public.

Q. Okay, sir. Any others? A. No organized institutions.

Q. Okay, sir. Mr. Kenney, would you agree with me as to this bus system that there are many functions served by a mass transit system such as that including energy conservation, the economy of the area, and that it is not solely for the benefit of the riders themselves? A. I would agree to the extent that it is energy-conserving if we can get people that are riding in Ford cars to ride the bus. If they'll leave the automobile. We haven't found as a practical matter that it happens. It sounds great in theory but it hasn't worked for us.

Q. And consumers are able to get to the shopping centers? A. Yes.

Q. Who otherwise are not, and it stimulates business? A. Yes.

[1565] Q. Mr. Kenney, this is plaintiffs' exhibit number 66. It's I think, actually supplied by your office. It's a list of the various boards and committees which you and the other commissioners make appointments to. The first two sheets are a summary giving the name of the committee

with a racial breakdown of the various members. On the second sheet there is a total which indicates three hundred ninety-five whites have been appointed to these committees and twenty-three blacks. We've counted thirty-nine separate committees. You said one of the, you said you were glad to appoint any citizens that came forward. Do you have any idea why more blacks don't come forward? Are they not interested in government? A. I couldn't tell you.

Q. Do you think they view your office as open and accessible? A. Yes, I do.

Q. Then why don't they come forward if they view it that way? A. You tell me.

Q. I was hoping maybe you could tell me.

THE COURT: He said he didn't know. Let's proceed, Counselor.

Q. Do you know of qualified blacks that would be willing to serve? [1566] A. Yes, Sir, I do.

[1566] Q. Are they serving? A. Many of them.

Q. Twenty-three? Mr. Kenney, on this community development block grant funds did you actively participate in formulating the request for CD funds? A. Yes, sir.

Q. And is it not a present assessment of needs of low income neighborhoods? A. Yes, it is.

Q. This is the 1977 community, let me see, I'll identify the exhibit for the Court. It's plaintiffs' exhibit number 78. It's the community development application from the county, 1977, and going into what's designated as page two of thirty-eight pages lists the five areas of need. I

would call, there's three on the first page. Going on the second page there are two more areas. In particular the fifth area, I call your attention to it. It denotes that the area of Cantonment and Century have an urgent need for community facilities, particularly sanitary sewage facilities, and points out serious health problems in these areas, et cetera, goes into housing demands. Do those areas have substantial black populations? A. Yes.

[1567] Q. So when this was filed as a request for funds it was the assessment of you and the others who filed this that these areas were in serious need as compared to other areas in the county, is that correct?

MR. LOTT: Your Honor, within the stipulation the plaintiffs have conceded they don't contest our responsiveness on the issue of water or sewerage.

THE COURT: Isn't that correct, Counselor?

MR. MENEFEE: Judge, I'm talking about the CD funds.

THE COURT: You're talking about CD funds but still getting into responsiveness on water and so forth, aren't you? It's covered under the stipulation regardless of where the funds came from. You weren't contesting unresponsiveness in that area.

MR. MENEFEE: Okay, Your Honor. Yes, Your Honor, that's certainly correct. This also, I just read community recreational facilities.

THE COURT: Let's proceed on. We could take a lot of time getting into things and I think you're getting into a stipulated area.

Q. So that was the present assessment as to the needs of the community, the particular needs, is that correct? A. Yes.

[1568] Q. I think that's about it, Mr. Kenney, except when you ran in 1970 was Mr. Davis the incumbent? A. Yes, sir, he was.

THE COURT: Mr. Kenney, let me ask you something. You said you believed a black man could get elected in this county. We have about two-thirds white, one-third black. On the reverse side of that token -

MR. LOTT: Your Honor, the percentage is about 19 percent black in the county.

THE COURT: Only 19 percent in the county?

MR. LOTT: Yes, sir. The one-third, two-thirds, is in the city.

THE COURT: Is that voter registration?

MR. CARR: The registered electorate in the county is about 16 or 17 percent.

THE COURT: Yet you still believe that with that proportion between the registered white and black, a black could be elected? A. Yes, sir, I do.

THE COURT: On the reverse side of that coin, if you have an area divided in this county where you had, say divided in an area where the reverse were true and in that particular district the blacks were some 75 or 80 percent [1569] and you were running in a district, could a white man be elected? A. If he was the right man I think he could, Your Honor.

THE COURT: You think he could if he was the right man? A. Yes, sir.

THE COURT: You don't believe there's any polarized voting by race in this county? A. I would hope there isn't.

THE COURT: But you must believe there is, of course, to make that averment. A. To some degree there is.

THE COURT: Anything else with Mr. Kenney

MR. MENEFEE: No, sir.

THE COURT: Any redirect?

MR. Lott: No, Your Honor.

THE COURT: Mr. Kenney, again as a commissioner you may step down.

* * * * *

TESTIMONY OF A.J. BOLAND

[1763 A] A.J. Boland,

called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CATON:

Q. Your Honor, this is Mr. A. J. Boland. He's currently the chairman of the Democratic Executive Committee for Escambia County. He is a principal in the local system, has been in the local system for how long, Mr. Boland? A. In Escambia County since 1953.

Q. Is that correct about the other information I gave about your background? A. Yes, I am the chairman of the Escambia County Executive Committee and I am the principal of Oakcrest Elementary School.

Q. How long have you been a member of the Executive Committee and how long have you been chairman? A. I've been a member of the committee, I believe, since about 1972.

Q. And how long have you been chairman? A. Since, that would have been December, 1974.

Q. December of '74? A. Right. I was elected chairman. I was elected to the committee in March of '74 during the [1764] presidential primary but we didn't have the reorganization of the committee till December of '74 and I was elected chairman at that time and I was reelected again in 1976.

Q. Could you describe to us briefly what the Democratic Executive Committee is and how it operates? A. Well, the committee is composed of precinct people,

men and women who are elected from each precinct in the county during presidential primaries. After their election there's an organizational committee and they elect -

Q. Elected by whom? A. Oh, the committee people are elected by the Democratic voters in each precinct, the registered Democratic voters in each precinct.

Q. Yes, sir. Go ahead. A. All right, after the primary election where these people are elected in the precinct then we have an organizational meeting and we elect the officers of the committee to serve for the four-year period. The nine officers that we have are the chairman, the vice-chairman, secretary-treasurer. We have, at that time we elected an audit committee composed of three members, one of whom is chairman. Then we elected a state committeeman and state [1765] committeewoman.

Q. So there are nine officers. Could you tell us who the current officers are? A. All right, I'm the chairman. Dorothy Devalt is the vice-chairman.

Q. Could you tell us the race of each person as you go along? A. All right, I'm white, of course, and Dr. Devalt is black. She's the vice-chairman. Betty Park is secretary. She's a white person. John Reed is the treasurer. He's a black person. Beverly Mills is chairman of the audit committee. She's white. Cleveland McWilliams is a member of the audit committee. He's black. Bill Lamar is a member of the audit committee. He's white. William Marshall is black and he is our state committeeman and he's also the state treasurer.

Q. He holds a state office as well as a local office? A. Yes, the state committee has three officers; a chairman, a vice-chairman and a treasurer.

THE COURT: You don't need to bother going into

that. That is uncontested on the record before us. Go ahead. A. Olivia Jones is the last member and she's white.

[1766] Q. And what's the approximate total membership of the executive committee? A. A Hundred sixty-five.

Q. And of those do you know how many are white and how many are black? A. Yes, there are thirty-three black. I have a list of their names here if you would like that. Thirty-three black.

Q. Yes, sir. A. And that's a percentage, I believe, of approximately 20 percent, and in the Democratic Party in the county the overall registration is, the black is about 15 percent of the toal Democratic registration and the membership on our committee, though, is 20 percent, and then of course the number of officers who are black on our committee is four out of nine or approximately 45 percent.

Q. I see. Could you give us a little more detail as to the function of the committee, what it actually does, what the purpose of it is? A. Well, the purpose of the committee is to support the Democratic Party and its nominees and to do anything that's proper and fitting according to custom and law and party rules in behalf of the Democratic Party. We have political rallies at election years during primaries. [1767] We try to assume a role of neutrality in the Democratic Primaries because we have our own people running against each other and that's in the family.

Q. Yes, sir. A. So we assume a role of neutrality during the primaries. After the primaries are over, though, and we have Democrats run against Republicans, we support our nominees. In the primaries we have political

rallies. We have TV rallies in which we give our candidates exposure to the public so that they present their cases.

THE COURT: You've given enough detail. Go ahead, Mr. Caton.

Q. Mr. Boland, you say the committee supports the Democratic candidate in the runoff. In the primary you try to take a neutral position?

MR. BLACKSHER: No, sir, he didn't say in the runoff. He said in the general election, may it please the Court.

THE COURT: He said in the general election.

MR. CATON: Excuse me, general election.

THE COURT: I think his position is clear and it's clear from other evidence. I thought it was even stipulated the Democratic Party takes no position in the Democratic Primaries but supports its candidate in the general election. Isn't that what you're saying to us? [1768] A. Yes, sir. Now, there are two primaries oftentimes.

THE COURT: And you take no position in either primary? A. In either one of those.

THE COURT: Go ahead, Mr. Caton.

Q. In supporting the candidate in the general election does it make any difference as to the race of that candidate, whether or not the committee supports him? A. No, sir, no difference whatever. We don't ask them whether they're black or white or man or woman or what their religion is. If it's a Democratic nominee then we treat them equally.

Q. Do you recall the election in 1974 when Mr. Jenkins, a black man, ran against Mr. Leeper in the runoff election? A. This was before I -

Q. Mr. Leeper, I believe, was a Republican, was he not? A. Right, this was before I became chairman. I became chairman in December of '74 and at that time the elections had already been held. I do recall the election, though, yes.

Q. Okay, do you know if the Democratic Committee [1769] supported Mr. Jenkins? A. To the best of my knowledge they did, yes. Now, I was not one of the elected officers at that time and I can not tell you to what extent but I voted for Mr. Leeper and I know that many others -

Q. Who did you vote for? A. Excuse me, I voted for Mr. Jenkins. I voted for Mr. Jenkins and I know many other Democrats who support him also.

Q. Yes, sir. Mr. Boland - A. Could I add this?

Q. Yes, sir. A. I didn't really support Mr. Jenkins solely because he was a party nominee. Now, he's a college professor and I knew some of my students had gone to school out there who gave him an excellent reputation and they said he's a good teacher and he's fair to his students and there were other factors to be considered also, but I did support him in that election, yes, sir.

Q. Could you tell us briefly, Mr. Boland, whether there are any either legal or practical restrictions on any black person or persons of races other than white in the access to the Democratic Executive Committee? [1770] A. No, sir. None whatever. We cooperate with Joe Oldmixon, the Supervisor of Elections, in getting new people to register, and of course we're not the only ones. The League of Women Voters, other groups do this also, and we try to get as many people to register or to reregister if they've been dropped. So the door is open. Anyone can register. Secondly, once they've been registered, well, we

have get-out-the vote campaigns and that's for all the precincts, for all groups and all races to get out the vote. And -

THE COURT: You've answered the question, I think.

Q. All right.

Q. How do you become a member? What do you have to do in order, is there any qualification other than to be a Democrat or what?

Q. To be a member of the Democratic Committee?

Q. Yes, sir. A. There are two ways you can become a member. One you can go down to the Supervisor of Elections' office during election time and qualify in your precinct and run like anyone else. Now, if no one runs and there's a vacancy then the committee by a majority vote can fill vacancies. So when we have meetings almost every member who knows of a person in the precinct where we have a [1771] vacancy can recommend that person and by majority vote he could be elected to membership in the committee. There are no restrictions. Now, well, there is one restriction and that's in reference to sex. We can only have one committeeman and one committeewoman from each precinct except precincts where there are a thousand or more registered Democrats and in that case we can have two men or two women, but that has nothing to do with race.

Q. I see. How about party headquarters? How about the access of black citizens to party headquarters? How does that operate? A. During the general election of 1976 we did open party headquarters down at 810 North Pace Boulevard and during the course of the presidential campaign we had three employees, clerk type people, working in the office, making telephone calls and sometimes

going out to the precincts and carrying groups of volunteers to do precinct work, distribute literature and things like that. There were three people employed in there. Two of them were white, one was a black. The black person was Esther Williams, a young school teacher.

THE COURT: You've given us a lot of background but he wants to know whether there was access of blacks. A. Yes, sir, definitely.

[1772] THE COURT: All right, sir, I think you've answered the question.

Q. Have there been situations, who is physically at party headquarters during an election, during a runoff election, say the last one? A. Well -

Q. General election, excuse me. A. During '76 when we had the election, I refer to '76 because we did not have, on nonelection years, '77, we do not have an open headquarters and we don't have one as of yet this year, but in '76 the three people who worked there were on a staggered schedule. Then we had many volunteers who come in and out and then the officers of the committee go in and any member of the committee can go in there. The candidates could come in and out. The candidates have, they can put up card tables and put their literature on the table.

THE COURT: Mr. Caton, you don't need all this background information.

MR. CATON: Your Honor, not all; just I think this is my last question and it will be pretty brief.

THE COURT: All right, sir.

Q. Tell us about the tables at the party headquarters. A. Each candidate could have a card table with [1773] his literature on it and he could use the telephones

in to the office. He could use whatever voter lists we had there. Now, all of the candidates, of our Democratic candidates, had access to this.

Q. This includes the black candidates as well as white candidates? A. Yes.

Q. After the primary is over and it's time for the general election is there still activity at party headquarters? A. Well, this has been the most of our activity then. We're low key during the primaries and the party headquarters really has a more sustained drive to get Democrats to vote and vote Democratic in the general election than we do in the primary. We're low key during the primary.

Q. In the last election when school board members, say, were being elected, were there black citizens as well as white citizens active in the general election at Democratic Headquarters? A. Oh, yes, very much so.

Q. Did you see them there personally? A. Yes, sir. Yes, sir, many of them.

Q. Were there any black candidates in that general election or had they lost in the primary? [1774] A. Dr. Spence was a candidate during that time and Mr. Jenkins was a candidate.

Q. We're talking about '76? A. Yes.

Q. Yes. A. They were candidates.

Q. Did they lose in the first primary or were they not successful? A. They lost in the second primary.

Q. So they were not in the runoff.

Q. The activity where the black citizens were there as

well as the white was in the runoff elections that you're referring to as well as the primaries? A. Yes.

MR. CATON: That's all.

THE COURT: Any cross examination? Any cross examination, gentlemen?

MR. BLACKSHER: Yes, Your Honor. We're fighting over who's going to get it.

THE COURT: Beg pardon?

CROSS EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Boland, are there any national party requirements on participation of minorities on the local [1775] committee? A. The national party adopted an affirmative action plan and it was subsequently adopted by the state and we participate in this too and in fact this list of thirty-three people here is our affirmative action people who were recommended to participate from Escambia County.

THE COURT: Mr. Boland, we'll do better if you answer questions specifically. You're full of your subject and have a lot of background but we'll get along, he'll bring out what we need to know. You wanted to know if they had some affirmative action program?

MR. BLACKSHER: Yes, sir.

THE COURT: He's now given you some details. Go ahead, Mr. Blacksher. You want to ask him something else about it? A. Specifically what is your question then?

Q. I think you answered it. I asked if there was a national requirement.

THE COURT: I think he's answered and given you more detail than you've really asked for. I was just suggesting some of the questions you can answer yes or no. We'll see how it goes. Go ahead, Mr. Blacksher.

Q. Mr. Boland, are you satisfied with the success the local Democratic Party has had in promoting the [1776] candidacy of its black candidates? A. Well in '76 we weren't promoting any candidates in the primaries and blacks did not make it to the general election so we had no opportunity there to promote them in the general election. But they, I don't know how I can answer your question on that. I cannot answer for previous administrations or past boards of the committee but in '76 the blacks had equal opportunity and equal access -

THE COURT: Mr. Boland, you've answered the question the best you can. You have no statement with respect to that question is what it amounts to. Anything else with this witness?

MR. BLACKSHER: No, except to note there was no testimony by this witness concerning the city case.

MR. CATON: I'm conducting this examination on behalf of the school board.

MR. BLACKSHER: I think that illustrates how we're all in this together, Judge.

THE COURT: You can make that in argument to me later on, if you wish to. I don't know what you want. Is this witness excused from further attendance?

MR. CATON: Yes, Your Honor. We would like to call John Broxson.

THE COURT: Mr. Boland, thank you for being here. [1777] You're excused from further attendance.
A. Thank you, Your Honor.

* * * * *

TESTIMONY OF LAWRENCE GREEN

[1991] LAWRENCE GREEN,

Called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FLEMING:

Q. Your Honor, the witness is Mr. Lawrence Green.

THE COURT: Has he been sworn here?

MR. FLEMING: Yes, he was, Your Honor.

[1992] THE COURT: All right, proceed.

Q. Mr. Green, I understand, is sixty-four years old. He's a black citizen of Escambia County. His address is 8720 Hinson Street in the Ensley area of Escambia County. Mr. Green is the precinct committee chairman for voting precinct number 53. Is that correct, Mr. Green? A. Yes. sir, it's right.

Q. Mr. Green, will you explain to the Court -

THE COURT: When you say voting precinct chairman, you mean the Democratic Precinct Chairman? A. Yes, sir.

THE COURT: That's what we're talking about, Mr. Green? A. Yes, sir.

THE COURT: All right, sir. Go ahead.

Q. Thank you for correcting me, Your Honor. Will you explain to the Court what you do as precinct chairman, what the official duties are and how you perform those duties, please. A. My duty is to see, get as many people registered as I can. And on election day my duty is

to make sure that all elderly and people that don't have automobiles and everything get to the polls.

Q. How do you go about doing that, Mr. Green? [1993] A. Every way that we can by people that are running, and the Democratic Party this last time give a hundred fifty dollars to make sure that we did get the people out in the Ensley area. If I may say so, as you know, Ensley formerly was Fig City and has become the largest, practically, voting area that we've got now in Escambia County.

Q. Okay, the racial makeup of that precinct, is it mixed black and white? A. It is.

Q. How long have you been the precinct committeeman, Mr. Green? A. This is my second term. My term expires 1980.

Q. And your first term began when, so we'll have the time frame? A. It was two years at the time, four years ago.

Q. Mr. Green, have you been involved in politics in Escambia County for a period of time prior to that? A. Oh, yes, sir. I really go way back.

Q. Have you been active in the campaign efforts of particular candidates for office and, if so, which candidates and what is your involvement in their campaigns? [1994] A. County commission, sheriff, state attorney, judges.

Q. How far back does your involvement in these campaigns go? A. Oh, way before Mr. Westmark's time, the late Mr. Westmark.

Q. That would have been prior to - A. And T. C. McCoy, Mr. Cobb, Bill Powell.

THE COURT: How many years are we talking about approximately, Mr. Green? A. Well, ever since that we've -

THE COURT: I mean how many years does this go back approximately? A. Oh, this goes back thirty years to me.

THE COURT: All right, sir, go ahead.

Q. How, if you would, describe some of the candidates that you've been principally involved with over that period of time, and by no means, I'm not asking you to list them all but explain how you've been involved in some of those campaigns. A. First let me say the precinct committeeman, I have so many people running for office come by and talk with me. As you know, I was an elected official just like everybody else and all I can express to any candidate when he comes out is this. He says, "Can I get [1994] your support?" If I agree to vote for him, then when others come and ask me, "Who are you voting for," all I can tell them is who I'm voting for. I can't tell them they vote for this man or that man. I tell them who I'm voting for and if they think he's got a good enough platform and have sold himself on them I guess they vote for him too.

Q. Do large numbers of voters come to you and seek your advice due to your having conversed with member of political candidates? A. That's why I'm late. I was in Cantonment on that same subject at an office today. That's where I was.

Q. You were talking with voters about candidates? A. They was talking, and if you want to know who they were talking about, they was talking about the governor's race, and I don't know them, I can't tell them who.

Q. Give the Court, if you would, an indication of how many candidates there are who come to see you during the election campaigns, just so the Judge will be aware of the extent of your involvement in local political activity. A. Well, everyone running. I would say everybody running in Escambia County goes by [1996] Lawrence Green's house if they're running. I believe I can say that. There's nobody that I could say don't go by.

Q. And do they come by actively seeking your support? A. They come by and they, the biggest of the candidates, when they come by they want to know where the voters are at in Ensley, where they live, so that they can go and see them and shake hands with them personally themselves. They say, "You have the list of them. Give them to me." Some of them bring their secretary. They sit under my tree out there and type out the names of all the lists of voters in 28, 53, 101, 69, 37 and 112 and 111. They check them out and they goes around to check them and see them and talk to them their personal self. They say, "I want to know where they live so I can go."

Q. Now, are these candidates who come to see you, are they mostly black candidates, mostly white candidates? A. All of them, black and white.

Q. Virtually every one of them? A. Everyone of them. I can name you every one. Every one I named previously have been to sit and talk with me.

Q. Well, let's talk about the campaigns, some of [1997] the recent candidates for office. I would appreciate it, if you would prefer it that I do it another way, I would appreciate it if you discuss them as they come to mind, those most vividly to you, so we won't waste a lot of time with some you don't have a recollection with. Explain to the Court some of the recent campaigns as you've experienced them, how the blacks and how the whites have

made efforts to solicit your support and what you've done for them. A. For instance, say Mr. Lancaster. I don't think he'd mind me using that. This last election he moved his campaign in Ensley and he moved it out there because he wanted to be where the voters were together and go see them. And he called people. He visited them out there, both black and white. He didn't just visit me alone. He went to everybody's house he could call and he went to see them. And he got the votes.

Q. What about Commissioner Kelson, Kenneth Kelson? A. Mr. Kelson did the same thing.

Q. What about Commissioner - A. Mr. Beck, same thing.

Q. What about Commissioner Jack Kenney? A. He didn't visit Ensley too well.

Q. Jack Kenney hasn't come to visit? [1998] A. No, he did not.

Q. How about Commissioner Charles Deese? A. He lives there, been there all his days. He was born and raised there in Fig City so he's all over there.

Q. How about the members of the school board? Do the members of the school board come to you and seek your support and seek the votes of the people in your community as well? A. On the school board system, this is my twenty-ninth year of my wife driving a school bus and the school board has a policy they don't care too much about the employees being too much in politics and that's my wife and I try to stay just as level on that as I can because I wouldn't want to see a school board member be elected and say, "Your husband ran around here and fought me." So I stay as level with them. I helped Mr. Stokes, if you might want to know about that. He'll tell you the same thing.

Q. Now - A. He's the superintendent of public instruction now.

Q. So far we've mentioned white candidates for office and those who have successfully been elected to office. Do these candidates, white candidates for office, [1999] repeatedly come around to your house or do you only see them at election time? Is their politicking continuous or is it just election day? A. Till 7:00 o'clock election night you still see them out working. They never gives up. Your arm gets tired of shaking hands.

Q. How about between elections? A. Same thing.

Q. Now I would like you, if you would, please, Mr. Green, to explain your experience with respect to the amount of such political activity from black candidates for office. For instance, Mr. Elmer Jenkins. Has Mr. Jenkins come to see you in the same fashion? A. Mr. Jenkins came out and visited me very often. The last three weeks he didn't, and my boys, one of them, the one in business, was handling all of Mr. Jenkins' transportation, as much as he could, as much as he was able in this last election.

Q. You say as much as he was able. What do you mean by that, sir? A. He went about five hundred gallons of gas for automobiles, I believe, you know, for transportation.

Q. And has Mr. Jenkins come around to keep up contracts between elections in the same manner that some of the other candidates you spoke about do? [2000] A. Mr. Jenkins did not do that in the last three weeks and he's sitting over there and I'm saying he did not visit Ensley. I don't think he did it because he didn't, hadn't checked the records to find out that Ensley was as strong a voting area as it was. Quite a few of the candidates hadn't

checked that with Mr. Oldmixon's office to find out those precincts are pretty heavily population of voters and maybe Mr. Jenkins during the time was think that he was better off, I reckon, in the city, which I don't know too much about city elections, and that's what come in.

Q. Are you suggesting Mr. Jenkins didn't make the effort he might have? A. To my opinion Mr. Jenkins slacked off in the last three weeks.

Q. And you're speaking of which campaign? Seventy-six? A. This last one, this time he ran with Mr. Bailey.

Q. Did you have the same experience with respect to his '74 campaign for school board? A. I don't think so because Mr. Jenkins was pretty well on Mr. Leeper that time.

Q. You're saying he ran a better campaign in '74 than he did in '76? [2001] A. No, I think he was better than Mr. Bailey, I feel that, countywide. I'm talking about countywide, Judge. He was countywide better on this last than he was previous according to my record.

Q. I'm about to go on to another subject matter, Mr. Green. Before I do I'll ask you, are there other races or other candidates for local office which you think are exemplary or good examples of the type of activity, the type of campaigning for political office that black or white candidates make in the committee precincts? A. You'd better come back and explain that a little more and let me see what you're talking about.

Q. What I'm getting at, I'm just trying to bring out the examples. A. I mean what you meant. You're saying between black candidates and white?

Q. I would like you to compare for us, if you would, the relative efforts of black candidates and white candidates for votes in your precinct and those precincts -

THE COURT: The relative ethics?

MR. FLEMING: Efforts.

THE COURT: Efforts. A. Well, you know yourself a lot of blacks don't just vote for blacks. They vote for the man that they think [2002] is most qualified. I think that's out, to say that all blacks are going to vote for blacks. They won't do that because they have people that they think about just like the white do.

Q. Do you not share the opinion of some that a black voter needs to have a black representative? A. They don't vote for blacks just because the black is running. There's a lot of people in Escambia County votes for the man they think is best qualified. That's who they vote for.

Q. Well, with respect to the qualifications, if what you say is true then those persons who have been elected to office might be the most qualified so I would like to get on to, without being argumentative I would like to get on to the next subject and ask you if you would describe your experience with respect to the responsiveness of the local white officials who've been elected to office after these campaigns and how responsive they are to the needs of the county's black citizens. Begin, if you would - A. I think I can answer that. At the present time I'll use the county commission on that. The county commission at the present that we have in office, they don't, not, I don't believe, to my opinion, look at a voter after the election because any taxpayer can call [2003] any one of the county commissioners and tell him, "I live in Bratt, the north end of the county, Bratt. I want you to come up here immediately. I want you to see somebody." And one of them is going. It doesn't make any difference about that.

Q. Have you had that experience? A. Sure, I've had that this past week.

Q. How about your neighbors? You may be a particularly influential person who can get results that somebody else can't get. Do you have similar experience with respect to your neighbors' ability to get service from county commissioners? A. If you're asking, we have a problem right now in Ensley on Stockdale Road and the neighbors are real upset. They continue to tell me they're not going to vote for Mr. Beck because they won't grade Stockdale. That is the street. The street is the thing, that the county can't get a drainage system. The highway patrol lives down there, has got a fish pond. Mr. Johnson says he's not going to run it on his and the other man is not going to run it on his so their hands are tied until they get it, and quite naturally, some of the blacks say the county commission is no good, but they have to have drainage. They have to have right-of-way. They've got two places right in my community, they can't grade the [2004] road through because some of the houses are sitting in the right-of-way. Thirdly, you have to give the county commission thirty-three feet off your property, thirty-three off the other, to get a route. A lot of our people, both white and black, say, "I ain't going to give the county no right-of-way, they're going to buy it." The State Road Department is the only ones going to buy a right-of-way and when they don't do that they don't get a road and the county commission is no good.

Q. I believe you have particular experience, particular knowledge in that regard of Airway Drive, which is in the vicinity of a neighborhood, It's in the same neighborhood in which you live and to which Mr. Sam Adams spoke about and which I understand Mr. Robert Jackson is a resident of that neighborhood. Will you explain. A. Mr. Robert Jackson lives one house off Airway Drive and it's paved. During the time when Airway Drive was paved the

blacks give a right-of-way from Johnson Avenue which goes north from Ensley school. It got down to the white settlement, just across on the end of the black settlement, and the white refused to give a right-of-way and the county commissioners stopped blacktopping right there. They did not do it until [2005] the whites signed the same things the black signed before they would pave it.

Q. Are you saying the black road got paved first? A. It got paved first, Airway Drive.

Q. What about the, have you experienced that only the commissioner from your residency district has been helpful in getting things done in the north end and in the Ensley area or have you gotten help from other commissioners as well? A. Before, well, I'm going back a little bit so some of you will know about it. You're not my age. Before this was countywide as it is now District Five, I know in the time Mr. T.C. McCoy, a grader would break down and he didn't have money to fix it with.

Q. T. C. McCoy? Before you go on, T. C. McCoy was a county commissioner prior to the change to at-large? A. Yes, District Five didn't get the funds to operate off as the other four districts and it has always been a trend that they just didn't get none. But since this has been like it is now and the county, everybody votes for county commissioner and does so, we have been beginning to get more roads from here to the north end of the county. We've not got them, we're still far behind, there are plenty of roads that are not paved, but we are [2006] getting better than we were since this has been beginning.

Q. Do you think it's the fault of the county commissioners that there are a number of unpaved roads? A. Well, during the past, as I aforesaid, that the county

commissioners in Districts One, Two, Three and Four would not allot the money for District Five is the largest there is because it goes all the way to the Alabama line and extends straight across Olive Road and goes to the north end of the county. It's a large thing and the funds always was low.

Q. Now, sir, have you had similar experiences with respect to the responsiveness and the works of members of the school board? How have the school board members treated you in that regard, those that have been elected? A. I haven't had no trouble with nobody in the school system. As I aforesaid, I have a wife with twenty-nine years and I didn't go into that too far because I didn't want some member of the school board being elected and turn around and say, "Well, your old man run around here and hurt me so I'm going to hurt you." I stayed away from that as much as I can. I helped Mr. Charlie Stokes and that's about as far as I went. I don't [2007] want to talk about the members of the school board. I would rather not.

Q. By not talking about them do you mean to suggest they haven't been responsive to the needs of your community? A. I haven't seen anything they've done wrong.

Q. You haven't seen what, sir? A. I haven't seen nothing so far they've done wrong.

Q. Okay, thank you. Now, I haven't asked you particularly about the city council because as I understand you haven't been involved with the politics of the City of Pensacola. A. No, sir, I do not bother with the city council. Anything north from Brent Lane to the Alabama line I'm willing to talk with you about but when you come on downtown I don't bother with that because I don't live in the city limits.

Q. Now, apart from the downtown area in the City of Pensacola, Mr. Green, I don't think this has been done before, will you explain to the Court where the principal areas in Escambia County are where black people live other than downtown. A. Right at the present time you're asking a question that I can't exactly answer because right in my [2008] neighborhood right now in these new subdivisions the blacks are buying and moving in all of them so they're wherever you go right now.

THE COURT: Are you in or outside of the city limits? A. Out of the city limits.

THE COURT: Are you in or out? A. I'm out of the city limits.

THE COURT: You wanted to find out outside of the city limits where the blacks primarily live? Is that it?

MR. FLEMING: I was trying to locate where blacks primarily live but I can do it through my next witness, Your Honor. A. I will tell you, this question, that in my community where I live is a large black community but the white are moving in. They're buying and building houses right in our neighborhood so it's hard to say now where blacks live or who lives. You used to.

MR. MENEFEE: We've got the census tracks.

THE COURT: You don't need to go into this. I think you have other testimony.

Q. I just have one more question, Mr. Green. Tell the Court, if you would, how far the Ensley area where you live is from downtown Pensacola. [2009] A. I live from the San Carlos Hotel nine miles and one-tenth.

Q. Nine and one-tenth miles from the San Carlos Hotel? A. I'm just south of the Nine Mile Road.

MR. FLEMING: Thank you very much, Mr. Green.

THE COURT: Cross examination of this witness?

MR. MENEFEE: Yes, sir, very brief.

CROSS EXAMINATION

BY MR. MENEFEE:

Q. Mr. Green, what's your educational background, please, sir? A. I'm glad you asked that.

Q. Yes, sir, I'm glad I did. A. It came out, I was trying to check on that yesterday. That was being checked yesterday. I'll give you the history of my life.

Q. No, I don't want the history of your life.

THE COURT: Mr. Green, just tell us the extent of your educational background. A. I finished the tenth grade.

Q. Okay, sir. A. At the Snow Hill Institute, but I went all the way through the Air Force and I got every type of diploma you can name up to a B-52. I was a crew chief [2010] in Okinawa.

Q. Okay, sir. Now, let's see, Mr. Green, if I can go back over it, it's precinct 53? A. Yes, sir, precinct 53.

Q. All right, sir, and which candidates in 1976 for county commission did you work for? A. Mr. Lancaster.

Q. Mr. Lancaster? A. Uh-huh. I didn't work for him. I just told people I thought he was the best candidate in that election.

Q. I see, sir. Okay, vote returns reflect that Mr. Lancaster got four hundred eighteen votes and Mr. Barnes got three hundred twenty-six in that precinct. A. That's correct.

Q. Who else did you work for, please, sir? Mr. Beck, Mr. Armour? A. Mr. Beck.

Q. Okay, sir, Mr. Beck carried that precinct four hundred seven to three hundred seventeen. Who else did you work for? Mr. Deese, Albritton? A. Worked for Mr. Albritton and lost.

Q. Mr. Albritton lost that one two hundred ninety-three to four hundred fifty-eight. Now, you said that Mr. Jenkins slacked off in his campaign? [2011] A. I said that Mr. Jenkins slacked off in -

Q. Let's see how Mr. Jenkins did in your precinct. A. That's right, slacked off coming out to the house, which I asked him and I didn't see him in the last three weeks before election.

THE COURT: Well, do you think, did you testify, you didn't testify that that hurt him in that area, did you? Or did you? A. Yes, sir, the first time it did, Judge.

THE COURT: You said you think it hurt him in the area because he wasn't there during the three weeks? Is that what you said? A. That's exactly the way I feel about it.

THE COURT: I see. I didn't know. Go ahead.

Q. Mr. Jenkins got three hundred fifty-nine votes in that precinct. That's what the record shows. A. Let me see.

Q. He lost that precinct by about thirty-five votes. All

those elections were sort of split down the middle, weren't they? Let's go back. How many did you say he lost that?

THE COURT: If you need to get into this, and I don't know, but his testimony was that he ran worse the second time he ran in that area than he did the first time [2012] and he thinks it's because he didn't show up and work out in that area. How valuable or what relevance that particularly has I don't know.

MR. MENEFEE: I don't believe it's supported.

THE COURT: If you're going to get into it, let's get the results from the first time and second time, if we have to spend this time. I question why we are doing it.

Q. Well, I suppose I have some doubt too, Your Honor.

THE COURT: I tell you what, sir. I'll just foreclose it now. I'll just rule it out under the rule if it has any relevancy it's outweighed by practical considerations, and let's drop the subject and go on.

Q. Thank you, Judge. Let's see, Mr. Green, you were talking something about the paving conditions in your neighborhood, Ensley, and we've had testimony from Mr. Sam Adams and others about unpaved streets in your neighborhood. There's a fair number of unpaved streets in your neighborhood, is that correct, sir? A. The only street in Ensley that I aforesaid was Stockdale, in that area, that there was a big complaint about. At the present time they can't get a drainage system and that's been in the budget for two years and they can't get it through because they can't turn [2013] the water in anybody's yard without being sued.

Q. Let me ask you this question then, sir. Am I not correct that Hinson Street is paved past your property and to the edge of your daughter's property and then it stops and then is unpaved and then Ensley Street is paved on the other side of your property to the edge of your son's property and stops there and then is unpaved. A. That is one of the cases where they come down and stopped the county commissioners and there's property in between the two residences and why it's not gone any further, Mr. Jenkins knows himself, that's Mr. Montgomery's property and he says the county wasn't going through the property and when they got up there he stopped them with shotguns and that's why they stopped there.

THE COURT: Who stopped them with a shotgun? A. The property owner.

Q. Have you had much problem getting blacks in your precinct to reidentify? Is that a problem? A. You mean to register?

Q. Yes, sir. A. I've been working on that all day. I have a list of them out there from Mr. Oldmixon's office showing how many were dropped from the list. I wish I'd brought it with me and let you see it.

[2014] THE COURT: He wants to know if you have a problem with it. A. No, sir, I don't have trouble.

Q. You mean it takes a lot of work? A. Yes, sir.

Q. You work at that a lot? A. I'll be glad when 1980 comes. I won't have this no more because it's voluntary work and it's tiresome. No, sir, I have no trouble getting them to register. I have slight trouble getting them to go to the polls and it's got so if you don't ride people to the polls these days they won't go.

Q. Well, did you understand I'm not saying Mr. Oldmixon caused any problems; I'm just asking how much - A. No, sir, he didn't. He's not caused any trouble.

Q. I'm not saying that. Are you telling me that it's easy to get people to go down there and reregister, reidentify? A. Yes, sir. I'm getting them now every day.

Q. Okay, sir. A. Every day.

Q. You work at it every day? [2015] A. Yes, sir.

Q. Okay, sir. A. Yes, sir. But I aforesaid that on election day we have a lot of difficulty sometimes getting people to go to the polls and I believe there's men in here with me on that.

Q. Are your sons in the fill and dirt business? A. Yes, I give them it. That was my business and I give it to my son after I was retired.

Q. Did you do any work for the county or school board? A. No, sir.

Q. Neither? A. No, sir. No.

Q. When were you first, when did you first try to get Hinson Street paved? A. Lord have mercy, ever since the late Mr. T. C. McCoy was in office.

Q. Early fifties? A. Thirty years ago.

Q. When did it finally get paved? A. Mr. Lancaster, Mr. Albritton and Mr. Kelson and Mr. Armour and them got together three years ago and paved it first down to my house and ran out of material and finally finished it to my daughter's house and later [2016] went in that area east and ran into Mrs. Mitchell and Mr. McCoy and them's property and said, "No, sir, you won't go any further."

That's how come Ensley Street runs into Airway Drive at Spencer and when it gets there Spencer takes over from Ensley and Ensley Street stops and we just can't, they won't let them go through.

Q. The answer is in the past two or three years? A. Yes, sir.

MR. MENEFEE: Thank you, sir. A. All right, sir.

THE COURT: Any redirect with this witness?

MR. FLEMING: Nothing further, Your Honor.

THE COURT: Mr. Green, thank you for being here. You're excused from further attendance. A. Yes, sir. Sorry I was late.

* * * * *

TESTIMONY OF DR. MANNING J. DAUER*

[3] DR. MANNING J. DAUER,

called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CARR:

Q. May it please the Court, this is Dr. Manning J. Dauer, D-A-U-E-R. He is sixty-eight years old. He ws born in North Carolina, attended the University of Florida, graduating with a bachelor's degree in history and political science in 1930. He got his master's from the University of Florida on the same subject in 1931. He finished his doctorate in history and political science at the University of Illinois in 1933. In 1931 to '32 he was a fellow, a teaching fellow, at the University of Illinois. He went to the University of Florida to become an instructor and professor and chairman of the department of political science, where he has been since 1933. He has been a Distinguished Service Professor at the University of Florida from 1972. He has been a visiting professor at a number of universities around the country, including New York University, the University of Alabama, the University of Massachusetts and Stetson University. In 1955 he was appointed by the Governor of Florida to the Citizens Committee on Constitutional Revision and its committee on reapportionment. He was in individual amicus curiae in a lawsuit styled [4] *Swann vs. Adams* involving reapportionment of the State of Florida in the mid nineteen-sixties. He has been director of a civics institute at the University of Florida, consultant to the Florida Constitutional Revision Commission in 1966, a consultant to the Executive Reorganizational Plan Committee of the Florida House of Representatives in 1968. He belongs to

*Transcript pages 21-47 of Dr. Dauer's testimony were accidentally omitted in printing but are included in Volume V to this joint appendix at 1284-1304.

numerous professional associations including the American Political Science Association, of which he was a member of the council between 1953 and 1955 and vice-president of that association between 1965 and '66. He also belongs to the Southern Political Science Association, of which he was the secretary-treasurer and later president; the American Historical Association; president of the University of Florida Chapter of Phi Beta Kappa; managing editor of the *Journal of Politics*. He has written numerous articles, monographs and books on municipal and state government, reapportionment, and on at-large and multi-member districting and the impact of such districting on minorities. Your Honor, we offer Dr. Dauer as an expert in the field of political science and introduce his vita.

MR. STILL: No objection, Your Honor.

THE COURT: All right, sir. For the record you do have to ask him if what you said is true.

Q. Doctor, is what I've said true? [5] A. Yes.

Q. Dr. Dauer, have you been retained by all the defendants in these lawsuits, that is, the City of Pensacola, Escambia County, and the School Board of Escambia County? A. I have.

Q. When were you first approached by these defendants? A. In February of this year.

Q. And are you being paid your usual hourly fee for your consultation in this case? A. That is correct.

Q. Is your fee in any way contingent upon the outcome of this litigation? A. No.

Q. Dr. Dauer, would you tell us what the terms "dilution" and "white polarization" or "white block voting"

mean to you as a political scientist. A. Yes. Dilution of any group of voters depends on a total picture of what the political effects of elections are. Included in these total effects, I would say, is any group of the population excluded from registration or from the polls, either formally or informally. That would be very significant evidence because if they did not have access to the ballot then they obviously could not participate.

[6] Q. You're talking, Doctor, about formal or informal restrictions of any sort? A. That is right. In other words if there were legal restrictions, as was formerly the case in the south, or if there were any attempts to place the polls in inaccesible places or matters of that nature, that would be a primary factor. A second factor is, do candidates try to get the vote of a particular minority. For example, do they, candidates, campaign on issues which are of interest to that group and do they openly campaign. A third factor is whether or not if the candidates are elected and have indicated a program or platform that concerns a particular group, do they carry out their program. By program I mean, for example, such matters as specific items as in the case of a School Board, this would include not only the regular curriculum but also any matters of interest such as compensatory education, summer school programs, Head Start, possible nursery support, school lunches, free textbooks, and various items such as vocational education. The same thing would apply in the case of cities: Are services rendered uniformly throughout the community to all recipients; is street lighting in that way; is it placed more in one area and more in one segment of the population than another; are streets paved; is there garbage collection; are there recreational facilities; or is there adequate fire [7] protection. And then included in this area of services are matters of special interest such as

employment programs, federal grant programs, are those actively sought; CETA programs which might lead to further training and employment, would a governmental unit such as a city, school board or county commission concern itself with such items. Then there will also be the matter of appointments to office and whether or not minorities are appointed among the various employees, whether or not there are affirmative action programs. Affirmative action includes seeing to it that there is no discrimination because of race or class or sex or the like. Now, affirmative action programs do have to be weighed in part according to the availability of individuals in particular categories of jobs. That is, if none are available in a particular specialty such as accounting, why, it would not be expected that affirmative action could result in an exact equal distribution among men and women or white and black. It would have to - but in general there should be a proper consideration. After you get through these services a final factor is on whether or not there is election of candidates from a minority, whether or not women or a minority are able to compete. But that factor by itself is only a part of the total picture.

Q. So what you're saying, Doctor, then is that the most important things to you as a political scientist in [8] weighing whether dilution exists in a given context is the actual campaign dynamics of a situation and the actual performance of the government.

MR. STILL: Objection, Your Honor, that is leading the witness.

THE COURT: Objection is sustained.

Q. All right, sir. Doctor, can you tell us how you measure the degree of the white polarization that you have said is the key to, or the sine qua non of dilution? Can you

make a determination of that solely upon any statistical measure?

THE COURT: I don't remember his testifying about polarization. Maybe I missed his testimony. Did you give us any thoughts or views about polarization of voting in connection with your testimony so far, Doctor? A. No.

THE COURT: That's what I thought, sir.

Q. I'm sorry, Doctor. I thought I understood you at the outset to address that question and its relationship to dilution.

THE COURT: Go ahead and get into your subject with him.

Q. Thank you, Your Honor. Doctor, what is the relationship between the term "dilution" and the term "white polarization" or "white bloc voting" as it's used? A. All right. This would relate in this manner, [9] that if the white vote in a black-white contest proceeds to block behind candidates who are opposed to a minority, for example if it were possible for the candidate to ignore a minority and then still get the bulk of the white vote, that would indicate white polarization. That would indicate that the appeal to prejudice, the appeal to race, transcended anything else. And then if the candidate did not campaign in the black community, was able to ignore the black community, was able to show that the black community did not have to have any of its needs considered, why, then if that candidate on such a platform received an overwhelming number of white votes and the white vote is in a majority, that would indicate the effective polarization. That would mean that the white vote was susceptible to a racist appeal. Thereupon you can measure that statistically if the white vote ignores the candidates who might favor the black community. And or, and if the

white vote blocks behind candidates that favor the white community only in platform and in the like, then I would say that that constituted polarization and was serious evidence of dilution.

Q. So can you make a determination -

THE COURT: Mr. Carr, just a moment, please, sir. Doctor, give me that last one, one more time, will you? I was trying to make notes. You said it can be measured statistically if the white vote ignores the candidates [10] favoring minorities, I got that much out of it, and would you give me the rest of it, sir. A. All right. If the white vote is following candidates who appeal on the basis of race and who ignore the needs of the minority or if in the platform there is specific appeal against the minority or if there is specific appeal only to the white voter and then if a percent of the white vote goes for that, overwhelmingly for that candidate on that type of platform, that would be evidence of severe polarization.

THE COURT: All right, sir. Go ahead, Mr. Carr.

Q. So, Doctor, can you measure the degree of this white polarization solely upon any statistical measure such as a regression analysis? A. A regression analysis is a procedure to find out correlation between various aspects of the appeal. For instance if I am making up a regression analysis I would get the precincts which have a heavy black vote and I would get the percentage of blacks and then I understand that there are some hundred-fourteen or were a hundred-fourteen precincts in Escambia County. I would scale those precincts according to the percent of vote that, excuse me, the percent of registration first. Then I would take the black-white registration in precinct after precinct and scale them from those that were high registra-

tion black to zero percent [11] black or very low percent black. That would, then I would enter the actual vote for particular candidates and if the candidate, for example, had ignored the black demands and got a heavy vote in the white precincts, that would be an important factor in a statistical measure. Now, specifically in stepwise regression, which is one procedure that you can use in this, the result would be that that would be one factor; that is, the relationship between the platform on the one hand and the percent of vote in black-white registration precincts. Now, also in regression analysis you have to consider other factors. For example, you may need to consider the men and women and then you do another correlation where you put the men and women in a particular precinct. Or you take from the census tracts the question of income. That would be a third type of correlation that you could work out. Then you see which of these is the most indicative of the way individuals vote. Now, this is a, in other words in a particular race if the candidate be white and the candidate has opposed the blacks and that candidate gets a heavy vote in the white precincts, that is evidence of vote polarization in that particular race. And, now, on the other hand, if the vote only blocks in the black precincts and doesn't block in the white precincts significantly, then it is not evidence of such polarization.

THE COURT: Why isn't it, sir? It would mean that [12] in the blocs with their votes they're voting for their candidate. A. That's right.

THE COURT: It would be polarization as far as they're concerned. A. It would be polarization on the part of the black vote but not polarization on the part of the white vote.

THE COURT: I see.

Q. Dr. Dauer, let me ask you this question. Could you have under a stepwise regression technique a high correlation of coefficient, coefficient of correlation, and still have very little blocking of the white vote? Could you have a black candidate who wins the white precincts and still come up with a high coefficient of correlation? A. You could in this type of situation in that this is a limitation on the, on the use of this stepwise regression. For instance if the black candidate gets 90 percent in the black precincts but still were to get 55 percent in the white precincts, then in the case of a majority of white voters, why, the candidate is doing very well. The black voters are being polarized; the white voters are not. This would still show as factor number one on the stepwise regression but it would not be evidence of vote dilution because the candidate either who is black or who favored the [13] black has been elected.

Q. Okay, sir. So, Doctor, you then don't think that you can determine vote polarization solely by regression analysis? A. No.

Q. What then do you look to to ascertain that? A. I would look at who gets - I think it depends on the total political picture, and by the total political picture I come back to what I defined as vote dilution and that is if all segments of the population can register and vote, if they are all, if the candidates campaign on issues and campaign among the minority, if the candidates are elected who favor programs for the minority, and if the candidates then carry that out, then the statistical analysis is far overcome by the total political result in the community and in that particular area as with a school board or county commission or city commission.

Q. Thank you, Doctor. Doctor, as you use the term "polarization" can you characterize a white electorate as

genuinely polarized, would it elect even a black candidate who had previously been appointed to his office and thus had an incumbency advantage? Would there be a genuine polarization in that situation? A. The candidate appointed is what?

Q. Is black. [14] A. If the candidate appointed is black he has the advantage of incumbency but the advantage of incumbency would be far overweighed by white versus black if the electorate were polarized.

Q. So an electorate that is genuinely polarized would not behave that way, would not elect the black in that particular case? A. That is correct.

THE COURT: That is in that particular case. Obviously if he's elected and running from minority status, obviously there was no polarized white vote against him. A. That's correct.

THE COURT: That would be true only in the particular election where that resulted. You would have to look to other races for other factors? A. Yes, in other races you would have to, if white versus black, and nobody is an incumbent, you still have to look at the program, at the platforms of the candidates. But the ultimate result is not, the ultimate definition of polarization in my judgment is not the election of a particular candidate because candidates have varying degrees of popularity and it is also true that when a minority comes into the political process its candidates may not be as well known as some others initially but in the long run then there still is potential for their election.

[15] THE COURT: I see. A. So that - but I think it still turns not just on the election of a candidate of a minority but the total result of the political process in

terms of the delivery of services that are of interest to the minority in the electorate, in the political process.

THE COURT: All right, sir.

Q. So, Doctor, may a black minority in fact have more real raw political power, if you will, in an at-large system than in a single-member system? A. The answer is that if it can - I have made studies of legislative delegations which I think are applicable to this situation. I did one on multi-member districts in Dade County and I weighed, this was legislative and not city or county commission, but it has this applicability, that candidates campaigned in the black community where there was at-large election. Then I took the votes cast in the Florida Legislature and found that the total number of votes in the Dade County delegation went fairly heavily when they were voting on measures in the Legislature such as social welfare legislation or the like according to the platform that they had campaigned on in the black community. Consequently, because the black community had impact on, in this case, some sixteen races, it had more impact in my judgment because it was having an impact on [16] sixteen votes in the Florida State Legislature. It was having more impact than if the black, if they were in single-member districts, and in single-member districts then at best there might have been two representatives from the black area and the other fourteen would not have been represented as much by the vote that was cast in the black community. So I don't regard multi-member districts as discriminating against the blacks. I think in fact they can have more impact because they vote for, in a number of races, and if we turn to a city or county commission the result could be that if you elect one black on the commission because that individual is in a, from a district where there are a majority of black voters, but the other four in-

dividuals only campaign in the white community, then that guarantees nothing about the delivery of services and nothing about the measures which the black community may need for its support. So that in such case you merely could transfer polarization from the specific district into the commission and there would be no gain. Whereas if you let the black individuals vote in the five races as for county or city commission, then what you wind up with is if the candidates, black or white, who are elected, campaign in the black cummunity , and if they, and in many instances that conceivably could be the swing vote that would determine the election, why, then there is a larger impact of the minority on the total results of [17] delivery of services than is the case if you have single-member districts.

Q. Doctor what other advantages are there to at-large systems as opposed to single-member systems? A. The other advantage of at-large systems is that there is less ward politics. There is, that is, we have had a number of studies of city commissions, of county commissions, and instead of considering the total needs of the community you might, you could often wind up, for example, distributing street lights per ward and then letting the person elected from that ward or district determine where they be placed. And this is on a basis of favoritism and is not a good system

Q. Doctor, is the danger of ward politics significantly reduced by the simple fact that you might have a city manager or county manager? A. It is reduced somewhat but it's no guarantee against ward politics. It's reduced somewhat because city manager charters typically have a provision preventing the individual member of a commission requesting specific policies of the city or county manager and also requesting that the city or county

manager make appointments. However, if they log roll among themselves for matters they could then get around that by having such a vote in the commission as would tie the hands of the city manager, city or county [18] manager.

Q. All right, Doctor, in an urbanized area is single-member districting necessarily going to reduce the costs of campaigning from that which would obtain in an at-large system? A. The answer is not because in rural areas if you had many different towns and different newspaper publications, why, then the cost of campaigning could be reduced if you have a very large constituency, but when you get into a metropolitan area the candidate has to buy time on the radio, the TV and in the newspaper, and usually each of those media that I've named cover the whole community so that the candidate might be reduced in terms of cost of shoe leather but that's a relatively minor factor.

THE COURT: Doctor, you're speaking in general terms and not this particular area there, I assume. I mean this is a general principle. A. I am speaking in terms of general principles because I have not studied -

THE COURT: For example in a report here that was put in by a study committee for the county commissioners I believe they said that they recommended single-member districts and the basis of it was they said it would significantly reduce the cost of campaigning. You don't really agree or disagree with that statement because you don't have [19] that much information about it, I assume. Is that correct? A. As applied to Escambia County I do not have the information.

THE COURT: Yes, sir. All right.

Q. But you don't think it's necessarily true? A. As a

general principle I don't think it would apply to an area the size of Escambia County.

Q. Doctor, let me ask you again as a general principle, is single-member districting necessarily going to increase, work an increase in voter turnout, as opposed to that which would obtain in an at-large system? A. The answer is no. Single-member districts are, depend in that case, voter turnout depends on the quality of the candidates in each of the respective districts and the interest stirred up within that district. The voter is concentrating on the two or more candidates in his or her particular district and that, and really it can cut down on the total turnout because if the candidates are running at large then all the voters of the particular area, whether the city or the county, will listen to several candidates and there's more chance that, in an at-large system, that more of them will be interested and get to the polls.

Q. Okay. Now, Dr. Dauer, defendants have not asked you, have they, to do all the study necessary to form an opinion as to whether black voting strength in Pensacola [20] or Escambia County has been diluted? A. No. I have looked at some election returns but I have not studied the total delivery of services in this county and I have been speaking as to general principles.

Q. Right. So defendants asked you to tell the court what you as a political scientist think are the most important elements to consider in assessing whether or not that dilution exists? A. Yes.

Q. But if you were confronted with an opinion, Doctor, that dilution of black voting strength is established solely by the fact that black candidates have been defeated in at-large elections, would you agree or disagree?

THE COURT: I don't remember any such testimony in this case, Counselor.

MR. CARR: All right, Your Honor.

THE COURT: Do you? I don't recall any such testimony.

MR. CARR: Your Honor, we had a bit of argument about that. I recall the day.

THE COURT: If you want to ask him, you can say it. I do not recall the testimony. The testimony I recall, it's obviously consistent with the defeat that black candidates, I don't know, I assume Dr. Dauer would agree it's at least a factor, some evidence to be considered, when you get in the question of polarization, but it certainly is [21] not determinative. Would you agree with that, Doctor?
A. I agree with Your Honor's statement of it, exactly.

Q. Thank you, Your Honor. Dr. Dauer, that's all the questions I have. Lawyers for the plaintiffs may like to cross examine.

* * * * *

[47] THE COURT: What does skewing mean, Doctor?
A. Skewing means that if the black vote is polarized and the white is not you can't generalize about the total electorate; you can only generalize about part of it. And skewing means that you're coming to a false conclusion.

THE COURT: Because you don't know about the white? A. Because you don't know about the white.

THE COURT: And you said what about it in these things? Did you say you found no skewing? A. I found that all of them were skewed because of the heavy vote in the black precincts and that that's a fault in regression analysis.

Q. Doctor, by heavy vote do you mean heavy in turnout? A. No, I mean the percent that is voting in that

[48] ward for the particular candidate; or precinct, excuse me, not ward.

Q. All right, sir. Now, doesn't the "r" square value by being very high tell us how well the line fits all of the dots on the scattergram? A. It tells you how the line fits the scatter diagram but it doesn't justify a conclusion of polarization. You can't move from the statistical evidence where only part of it is polarized to saying the total electorate is polarized.

Q. But the regression analysis looks at the entire electorate, doesn't it, Doctor? A. It looks -

Q. Gives you an "r" square for the entire electorate? A. Yes, you can have an "r" square but the "r" square doesn't prove anything except that this is factor number one in the entire operation. But I'm still saying that if, that in certain of those races where the white candidate got 51 percent or better in most of the white precincts, it still turned out that factor number one was black-white. But that does not conclude polarization. The black candidate in the city races was getting, was being elected.

Q. Now, Doctor, let me call your attention in [49] *Changing Politics of the South* to your table nineteen, which is labeled "Wallace Vote in 1968, Florida Counties in Multiple Correlation Stepwise Regression Analysis." A. Yes.

Q. Now, there the first step that you came out with was percent of income over fifteen thousand dollars and you had an "r" square of .7635. A. Yes.

Q. Now, what does that particular piece of information tell us about the appeal of George Wallace to the electorate? A. It tells you that there is a correlation with in-

come. But it doesn't say that, it doesn't go on to say that that is polarized.

Q. It indicates that there is a correlation, is that correct, sir? A. That is correct. But the conclusions you draw from correlations are not automatic. You have to use some judgment.

Q. All right, Doctor.

THE COURT: I think what you're telling me, even in these situations where you have here you thought it was insufficient there were some correlations shown by the election results and things, which means to my layman's mind, and you straighten me out, that there were indeed some whites voting [50] for white candidates as against black candidates because of racial considerations but that polarization means sufficient numbers of them voting for that reason to effectively prevent the black from having a chance of getting elected. A. To prevent the black from having any chance.

Q. Now, Doctor, I want to make sure we're talking about the same term here. You're not talking about dilution of the vote; you're talking about polarization of the vote, which means that they're polar opposites, isn't that correct? A. That would be correct.

Q. And you're saying that a regression analysis which comes out with an "r" square of .95 or above does not tell us that the vote is polarized along racial lines,that blacks are voting one way and whites are voting another way?

MR. CARR: Your Honor, I'm going to have to object to that. He's gone into this time and time again and the witness has testified time and time again the voting returns themselves and not statistical analysis gives you the total picture.

THE COURT: I'm going to let him ask the one more question. You are repeating yourself in cross. Go ahead. He used this time an "r" two factor of what? A. Point nine. I would have to know then as to, that would show, that might show that in the case of this [51] particular situation, if 90 percent are up in the top, well, let me start over. That would show that if in the black precincts the candidate was getting 95 percent and in the white precincts he was getting 55 and it all scaled neatly down in relation to the number of whites you still could get that out of a hundred-fourteen precincts ninety-five of them, 95 percent of them scaled most according to black-white. But that would not show that the white vote is polarized because in the example I've cited down in the white precincts the individual is still getting over 50 percent of the votes and so your white voters are giving a majority to the black candidate and you're still getting, but you're still having factor number one emerge as black-white. But it doesn't show polarization down at the other end.

Q. In that case -

THE COURT: Mr. Still, go ahead. We have about gone over this thing pretty thoroughly.

Q. Well, in that case the difference, the change in the vote would be what we would be measuring, wouldn't it, from the all-white precincts to the all-black precincts, and we would be explaining by the "r" square of .9 or .95 the difference in the vote, is that correct, Doctor? A. The difference in the vote from what?

Q. The difference in the vote between the all-black precincts and all-white precincts. A. No, when you're [52] using units and you're using the proportion of black-white registrants to votes and you're saying that the most powerful explanation here is that, black-white.

Q. All right, Doctor, did you in this analysis of George Wallace's vote in 1968, did you check to see whether there was any skewing there? A. Yes.

Q. You checked? Was there any skewing? A. The answer is no because it also showed a relationship with the lower income groups.

Q. All right, Doctor. Now, you mentioned that you utilized what you called the difference of means test and I believe in your deposition you talked about Blalock's book, *Social Statistics*. A. Yes.

Q. Is this the same difference of means test that is found in Blalock's book? A. Yes.

Q. This difference of means test, is this analysis you've been talking about here of the 40 percent as a cutoff? A. Yes. Now, the difference of means in Blalock's doesn't do the 40 percent. I mean you're using the Blalock formula and then you're using the Jewel and Patterson definition [53] of what is polarized and what is not.

Q. Doctor, with regard to whether or not single-member districts reduce the cost of campaigning in urban areas I believe you testified that it as a general rule does not because these candidates have all got to use the same TV stations and same newspapers that they used in at-large elections. Have you made any analysis to see whether or not there is any difference in the amount that is spent in Escambia County between people running for the County Commission and people running for the School Board, both of which are elected at large? A. No, I've made no analysis of Escambia County on those points. I was speaking as a general principle.

Q. Doctor you, I believe, in your deposition cited New, Verba and Pertrocik's book, *The Changing*

American Voter, as being one which is well-recognized in the field, is that correct? A. That is correct.

Q. Would you agree with them when they speak of the polarizing issue of race as being an important factor in analyzing elections? A. As a possible factor, yes, that certainly you always have to take the ethnic vote into account and then see what the result is.

Q. And Bartley and Graham in *Southern Politics and the Second Reconstruction* [54] speak of the perverse persistence of race in politics in the South. Would you agree with them?

THE COURT: Speaks of the what, sir?

Q. Perverse persistence of race as a factor in politics. A. Fortunately I think it is decreasing and it depends on the area and the particular race as to that, but it always is one in Southern politics that we have to analyze.

THE COURT: Mr. Still, I don't know how much longer you think it will take but it's been going on a considerable period.

MR. STILL: Yes, sir. I've got about one or two more questions.

THE COURT: While you're looking them up or thinking about what you want to ask I'll ask him a question. Dr. Dauer, I have had two, we have had two experts testifying in this field respecting regression analysis and dilution and that kind of thing. They testified here last week. Have you had any opportunity to go over their testimony as they gave it here? A. Not in court. I did look at their regression figures and I did, I was supplied with their depositions, which, I add, were read to me, the point being that I'm developing cataracts and so it's inaccurate if I say I read [55] them, but I did have them. I had their depositions. But I have not heard their testimony.

THE COURT: Of course I haven't had the depositions. I heard the testimony. Let me ask you this point, this question, though. To what extent, if any, do you disagree with their findings or conclusions? A. All right. As to their use of regression analysis I think we've been discussing it.

THE COURT: I understand that one. A. That point. Another point, and I think that their definition of dilution does not include what I think is correct in political science, which is the total scope of the political process including registration and voting, whether the candidates campaign, whether they campaign on significant issues, and finally delivery of services. And in the last place I would put the issue of just black-white opposed elections because I think that from the standpoint of that group in the electorate the test of the pudding is not the election in a particular race. So I found their testimony leaning much too heavily just on the issue of black-white opposed races and not on the total political process.

THE COURT: All right, sir.

Q. Doctor, you've written an article or a monograph in 1953 in which you supported the use of at-large elections [56] for local communities in Florida, didn't you? A. Yes.

Q. So you've been on record for at least twenty-five years now supporting at-large elections, is that correct? A. At-large providing the districts are of reasonable size or there be a reasonable number of candidates for the voter to receive attention.

MR. STILL: Thank you very much, Doctor.

THE COURT: Redirect?

MR. CARR: Your Honor, I don't believe we have any questions.

COLLOQUY BETWEEN THE COURT AND COUNSEL

[2058] MR. FLEMING: I'm uncertain to the degree to which we'll be able to stipulate but I will offer –

THE COURT: Well, all right.

MR. FLEMING: I will offer this much and see if Mr. Menefee is in agreement.

THE COURT: I suppose, does that have really much relevance here? We're talking about dilution of vote through, in effect, official action or inaction, nothing else. We can't cure all the racial ills under the guise of constitutional requirement.

MR. MENEFEE: Judge, it has this relevance. The political system operates on a given social structure. Contacts for politicians, as ample testimony has developed here, are formed in any number of clubs, in any number of social institutions.

THE COURT: Well, it may have some relevance, carrying it pretty far. Anyhow, let's see what you have.

MR. FLEMING: I would suggest if the stipulation is required, I would suggest this, Your Honor. There's a significant racial segregation in private social, civic and religious organizations. However, this is due principally to voluntary decisions of the public and there is little to suggest that this segregation is due to the rules of the organizations or its members.

MR. MENEFEE: Your Honor, we would certainly, the [2059] first sentence is fine. I think it's a matter of custom.

THE COURT: Beg pardon?

MR. MENEFEE: We would suggest it's a matter of custom. We're not arguing any prohibitory rules.

THE COURT: Well, the rest of it, it is indeed a matter of custom and I would think people living in this area, undeniably there have been some times when we've had clubs or civic organizations or particularly social clubs who have not let black members join. You can't get away from that, Mr. Fleming.

MR. FLEMING: I don't know that, Your Honor.

THE COURT: Well, anybody over here would back that one up, I think. We've had social clubs that have kept out minority groups and we have it today. Anybody want to, anybody dispute that statement? I'll give you the Pensacola Country Club as an example.

MR. RAY: Never been there, Judge.

THE COURT: You're not a member of it? You're not a member of that club?

MR. RAY: No, sir.

THE COURT: Isn't that true? I happen to be a member of it. I've never seen a black whose a member of it. I have been told that club, for example, in times past and today will not let blacks be members of it and [2060] will not let Jews be members of it.

MR. LOTT: Your Honor, if that be the case, the fact of that being the case is obviously not in violation of any federal law.

THE COURT: I would agree with it. He's talking about what it is. Let's don't say that's true if you all don't know. I'm just having to speak from what I've been told and I'm just not out there very much. I'm not active in that club. I just happen to be a member of it, so I don't know whether it's true or not.

MR. FLEMING: Your Honor, I believe defendants

have nothing further to present. The defendants rest, Your Honor.

THE COURT: All right, on this stipulation we'd better get a lot of custom in it too. There's a lot that goes back. I think it's equally true there would be black organizations in this town in which we've got that kind of segregation too. We've got a lot of black churches with few, if any, white members. We've got black organizations which by custom otherwise don't have whites.

MR. MENEFEE: The stipulation was to cover both sides.

THE COURT: Let's leave it generally at that.

MR. FLEMING: I think the remarks on the record [2061] will suffice for the record.

THE COURT: Here I am putting stuff on the record and making stipulations for you. Anybody got objections to what I finally said there? We'll get away from that particular country club deal. Any argument about that being true in this area?

MR. RAY: Your Honor, I don't know if it's true.

THE COURT: Don't know what? Forget about the country club. I mean what I said about the black organizations. We have them and black churches and few, if any, whites in them, and white organizations and white churches and few, if any, blacks in them. Generally speaking, that's true in this community? Is that acceptable to all of you as a stipulation?

MR. MENEFEE: It is to us.

MR. LOTT: But not as a rule.

MR. CATON: With the qualifications Mr. Fleming had about custom.

THE COURT: It's been there by custom and there are some exceptions to it but it is generally in this area and community today.

MR. FLEMING: I think that's agreeable, Your Honor.

THE COURT: All right, what else do you want to get into now?

[2062] MR.FLEMING: Nothing, Your Honor.

THE COURT: Everybody announcing, you're announcing rest, all three of you?

MR. BLACKSHER: Mr. Shimek's testimony will take five minutes, Judge.

THE COURT: Let's get your rebuttal testimony right now.

MR. BLACKSHER: We'll call Mr. Paul Shimek. I'll get him, Judge.

MR. RAY: Your Honor, before Mr. Shimek testifies I would like to state that my understanding of the problem with this exhibit was that it wasn't the complete exhibit and therefore the defendants or the plaintiffs were afforded an opportunity to bring the complete exhibit to court to make it a full exhibit. I don't know what testimony Mr. Shimek could offer in that regard.

THE COURT: I think he's caught short here and he's going to have Mr. Shimek testify from personal recollection and maybe come into it. I think he's had that problem, Mr. Ray. I don't know. We'll let him come forward and see. Mr. Ray. I am not inclined to be too technical. If he's got other evidence in that thing that goes beyond what you did it seems to me we ought to get it here.

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Office-Supreme Court, U.S.
FILED
AUG 8 1983
ALEXANDER L. STEVAS
CLERK

No. 82-1295

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX
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Probable Jurisdiction Noted April 18, 1983

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Memorandum Decision and Order of the United States District Court for the Northern District of Florida in *McMillan* v. *Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla. Dec. 3, 1979) B-54a

Memorandum Decision of the United States District Court of the Northern District of Florida in *McMillan* v. *Escambia County, Florida* PCA No. 77-0432 (N.D. Fla., Sept. 24, 1979) B-66a

Memorandum Decision and Judgment of the United States District Court of the Northern District of Florida in *McMillan* v. *Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla. July 10, 1978) B-71a

Judgment in *McMillan v. Escambia County, Florida*, 688 F.2d 960 (5th Cir. 1982) C-116a

EXHIBIT 6

Demographic Tables — Pensacola Florida

Table P-1. General Characteristics of the Population: 1970

(For minimum base for derived figures (percent, median, etc.), and meaning of symbols, see text)

Census Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
RACE															
All persons	243 075	205 334	59 507	145 827	37 741	260	3 820	4 659	5 537	2 203	5 116	3 232	5 601	3 372	7 029
White	198 506	163 014	39 509	123 475	35 492	152	1 841	3 971	191	1 421	217	1 487	4 278	3 235	7 020
Negro	42 341	40 362	19 709	20 653	1 979	107	1 959	583	5 344	778	4 896	1 717	1 295	132	1
Percent Negro	17.4	19.7	33.1	14.2	5.2	41.2	51.3	12.5	96.5	35.3	95.7	53.1	23.1	3.9	-
AGE BY SEX															
Male, all ages	121 734	102 350	27 604	74 746	19 384	135	1 778	2 159	2 494	969	2 324	1 488	2 452	1 539	3 412
Under 5 years	11 114	9 355	2 397	6 958	1 759	5	131	179	280	60	196	167	170	90	238
3 and 4 years	4 307	3 636	982	2 654	671	2	51	66	121	27	92	59	65	32	105
5 to 9 years	12 874	10 824	2 935	7 889	2 050	2	157	193	357	75	250	196	188	95	355
5 years	2 488	2 112	521	1 591	376	-	25	29	67	13	43	35	36	22	63
6 years	2 461	2 076	562	1 514	385	1	27	26	63	11	55	37	35	13	72
10 to 14 years	13 611	11 389	3 242	8 147	2 222	4	194	188	392	106	324	194	209	130	441
14 years	2 650	2 214	631	1 583	436	3	42	31	73	19	76	28	43	31	86
15 to 19 years	12 602	10 753	2 769	7 984	1 849	16	163	183	283	106	257	150	219	161	359
15 years	2 553	2 155	652	1 503	398	4	33	35	71	25	58	40	41	38	92
16 years	2 417	2 061	621	1 440	356	3	43	49	62	21	55	36	47	25	88
17 years	2 290	1 956	551	1 405	334	3	35	29	69	27	45	24	48	33	74
18 years	2 488	2 141	504	1 637	347	5	32	37	42	17	56	31	45	29	53
19 years	2 854	2 440	441	1 999	414	1	30	33	39	16	43	19	38	36	52
20 to 24 years	16 056	13 212	2 207	11 005	2 844	16	162	217	167	68	137	92	272	150	289
20 years	3 452	2 822	399	2 428	625	4	37	28	41	15	38	15	49	29	35
21 years	3 158	2 595	403	2 192	563	5	35	43	35	16	31	26	47	29	26
25 to 34 years	15 582	13 004	3 039	9 965	2 578	15	167	262	216	104	198	125	224	124	345
35 to 44 years	12 973	10 892	3 040	7 852	2 081	21	158	235	232	94	230	137	208	134	472
45 to 54 years	12 256	10 477	3 372	7 105	1 779	20	198	270	238	134	259	131	319	236	494
55 to 59 years	4 654	3 945	1 364	2 581	709	7	94	119	96	61	137	79	142	125	154
60 to 64 years	3 600	3 103	1 101	2 002	497	10	81	96	88	65	121	65	158	106	102
65 to 74 years	4 309	3 628	1 377	2 251	681	13	165	133	98	56	144	102	203	114	115
75 years and over	2 103	1 768	761	1 007	335	6	88	84	47	40	71	50	140	74	48

Census Tracts

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
Female, all ages	121 341	102 984	31 903	71 081	18 357	125	2 042	2 500	3 043	1 234	2 792	1 744	2 149	1 833	3 617
Under 5 years	10 404	8 820	2 335	6 485	1 584	5	110	195	282	63	243	142	144	68	231
3 and 4 years	4 101	3 465	926	2 539	636	-	42	81	120	24	112	59	51	26	91
5 to 9 years	12 383	10 406	2 821	7 585	1 977	5	149	194	363	78	238	164	171	93	332
5 years	2 347	1 968	551	1 417	379	3	34	36	68	19	34	28	39	13	60
6 years	2 481	2 086	532	1 554	395	-	26	42	76	17	47	27	35	14	66
10 to 14 years	13 124	11 058	3 285	7 773	2 066	7	189	222	382	106	341	214	212	129	406
14 years	2 590	2 197	653	1 544	393	-	41	57	79	18	71	41	41	34	67
15 to 19 years	11 612	9 875	2 919	6 956	1 737	4	164	215	312	111	225	162	260	153	328
15 years	2 481	2 124	637	1 487	357	2	42	51	77	25	39	35	50	22	94
16 years	2 420	2 035	584	1 451	385	-	25	38	65	30	52	29	47	42	66
17 years	2 270	1 922	562	1 360	348	-	26	39	69	19	58	29	35	33	64
18 years	2 231	1 923	596	1 327	308	2	30	49	50	18	40	45	61	28	56
19 years	2 210	1 871	540	1 331	339	-	41	38	51	19	36	24	67	28	48
20 to 24 years	11 967	10 116	2 720	7 394	1 853	12	179	272	225	88	176	129	303	137	374
20 years	2 437	2 067	546	1 521	370	4	35	58	54	21	40	32	59	28	56
21 years	2 496	2 111	561	1 550	385	3	39	59	49	17	43	20	69	35	64
25 to 34 years	15 776	13 158	3 491	9 667	2 618	11	176	266	333	88	247	157	249	150	384
35 to 44 years	14 557	12 364	3 818	8 546	2 193	11	172	249	330	139	329	163	290	190	573
45 to 54 years	13 163	11 363	3 760	7 603	1 800	15	252	332	309	151	284	190	378	297	472
55 to 59 years	5 076	4 373	1 651	2 722	703	15	155	129	131	87	190	90	210	159	149
60 to 64 years	4 225	3 656	1 501	2 155	569	8	120	124	120	87	186	80	246	142	126
65 to 74 years	5 828	5 028	2 262	2 766	800	20	229	200	167	147	222	165	401	197	158
75 years and over	3 226	2 769	1 340	1 429	457	12	147	102	89	89	111	88	285	118	84
RELATIONSHIP TO HEAD OF HOUSEHOLD															
All persons	243 075	205 334	59 507	145 827	37 741	260	3 820	4 659	5 537	2 203	5 116	3 232	5 601	3 372	7 029
In households	232 572	196 393	59 042	137 351	36 179	218	3 781	4 653	5 531	2 188	5 113	3 201	5 565	3 372	7 029
Head of household	71 233	60 387	19 308	41 079	10 846	106	1 463	1 594	1 551	792	1 649	1 025	2 207	1 301	2 200
Head of family	60 678	51 080	15 187	35 893	9 598	41	911	1 250	1 239	584	1 149	726	1 555	997	1 897
Primary individual	10 555	9 307	4 121	5 186	1 248	65	552	344	312	208	500	299	652	304	303
Wife of head	51 866	43 279	11 956	31 323	8 587	29	580	1 027	755	450	688	447	1 221	862	1 728
Other relative of head	106 466	90 016	26 701	63 315	16 450	62	1 603	1 920	3 144	890	2 617	1 641	2 043	1 158	3 014
Not related to head	3 007	2 711	1 077	1 634	296	21	135	112	81	56	159	88	94	51	87
In group quarters	10 503	8 941	465	8 476	1 562	42	39	6	6	15	3	31	36	-	-
Persons per household	3.26	3.25	3.06	3.34	3.34	2.06	2.58	2.92	3.57	2.76	3.10	3.12	2.52	2.59	3.20

Census Tracts

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
TYPE OF FAMILY AND NUMBER OF OWN CHILDREN															
All families	60 678	51 080	15 187	35 893	9 598	41	911	1 250	1 239	584	1 149	726	1 555	997	1 897
With own children under 18 years	35 345	29 640	7 945	21 695	5 705	14	336	567	727	248	557	388	577	376	1 063
Number of children	80 393	67 557	18 416	49 141	12 836	28	887	1 250	1 997	550	1 523	1 101	1 241	755	2 392
Husband-wife families	51 866	43 279	11 956	31 323	8 587	29	580	1 027	755	450	688	447	1 221	862	1 728
With own children under 18 years	30 297	25 154	6 273	18 881	5 143	9	191	493	434	196	328	225	457	331	964
Number of children	68 258	56 760	14 234	42 526	11 498	22	489	1 101	1 204	441	891	615	993	686	2 189
Percent of total under 18 years	77 6	76.6	69 0	79 5	83 1	55.0	43 1	78.0	48 8	69 4	46 9	48 4	72.9	86 0	88 2
Families with other male head	1 350	1 167	450	717	183	2	48	43	61	19	66	30	54	19	23
With own children under 18 years	534	458	125	333	76	1	11	6	24	5	23	7	8	3	6
Number of children	1 194	1 026	270	756	168	2	26	8	54	9	53	22	13	4	9
Families with female head	7 462	6 634	2 781	3 853	828	10	283	180	423	115	395	249	280	116	146
With own children under 18 years	4 514	4 028	1 547	2 481	486	4	134	68	269	47	206	156	112	42	93
Number of children	10 941	9 771	3 912	5 859	1 170	4	272	141	739	100	579	464	235	65	195
Percent of total under 18 years	12 4	13.2	19 0	11 0	8 5	10 0	32 8	10 0	29 9	15.7	30.5	36 5	17 3	8.1	7.9
Persons under 18 years	87 941	74 105	20 622	53 483	13 836	40	1 134	1 412	2 469	635	1 899	1 270	1 362	798	2 481
MARITAL STATUS															
Male, 14 years old and over	86 785	72 996	19 661	53 335	13 789	127	1 338	1 630	1 538	747	1 630	959	1 928	1 255	2 464
Single	26 674	22 460	5 360	17 100	4 214	55	430	395	536	213	538	291	480	323	619
Married	55 963	46 936	12 937	33 999	9 027	48	717	1 092	893	489	991	537	1 291	884	1 766
Separated	1 120	993	452	541	127	7	93	23	67	13	108	49	27	4	8
Widowed	1 730	1 454	603	851	276	10	69	52	62	17	115	51	70	24	21
Divorced	2 418	2 146	761	1 385	272	14	122	91	47	28	86	80	87	24	48
Female, 14 years old and over	88 020	74 897	24 115	50 782	13 123	108	1 635	1 946	2 095	1 005	2 041	1 263	2 663	1 577	2 715
Single	17 333	15 049	5 210	9 839	2 284	21	377	390	545	220	451	266	529	319	575
Married	56 913	47 724	13 737	33 987	9 189	39	754	1 131	1 055	512	998	613	1 255	912	1 814
Separated	2 115	1 939	958	981	176	2	114	33	187	31	104	107	63	9	23
Widowed	9 530	8 276	3 621	4 655	1 254	16	356	277	314	209	429	271	576	268	242
Divorced	4 244	3 848	1 547	2 301	396	2	48	148	181	64	163	15	203	78	84

Exhibit 6 1-11-15

Table P-1. General Characteristics of the Population: 1970—Continued

(For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Census Tracts	Pensacola—Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
RACE															
All persons	6 911	2 479	5 854	831	1 579	116	329	135	234	208	395	1 391	3 703	5 978	1 862
White	6 896	2 453	5 291	45	134	5	328	134	232	208	231	1 387	3 637	5 241	3
Negro	2	11	542	785	1 445	111	1	-	-	-	164	-	52	702	1 859
Percent Negro	-	0.4	9.3	94.5	91.5	95.7	0.3	-	-	-	41.5	-	1.4	11.7	99.8
AGE BY SEX															
Males, all ages	3 366	1 146	2 767	365	741	45	139	59	121	105	179	689	1 809	2 904	863
Under 5 years	378	101	230	88	50	7	6	2	13	6	8	82	161	267	106
3 and 4 years	160	43	84	35	26	3	2	1	5	3	3	23	51	88	42
5 to 9 years	474	122	274	76	76	4	5	4	18	14	19	94	142	352	108
5 years	83	22	43	14	19	1	1	-	3	2	4	23	28	68	21
6 years	95	25	58	16	18	-	-	1	3	6	3	14	29	72	18
10 to 14 years	414	88	343	60	105	6	14	6	10	14	10	77	174	406	133
14 years	74	16	66	8	20	1	5	2	4	3	2	18	42	87	29
15 to 19 years	257	125	317	36	90	6	14	3	7	17	19	48	194	267	96
15 years	67	25	74	13	23	2	3	2	2	4	5	8	40	66	25
16 years	65	13	81	6	17	1	2	-	3	4	3	7	37	54	31
17 years	44	20	60	9	16	2	8	1	-	4	2	9	51	64	11
18 years	44	33	54	2	18	1	-	-	2	3	4	11	31	45	17
19 years	37	34	48	6	16	-	1	-	-	2	5	13	35	38	12
20 to 24 years	170	168	190	14	39	-	11	7	11	7	14	52	251	249	54
20 years	32	26	35	4	6	-	1	1	1	2	3	7	23	45	16
21 years	23	23	41	5	10	-	1	2	3	2	3	7	31	43	8
25 to 34 years	637	167	290	28	94	1	15	1	12	14	15	139	261	438	80
35 to 44 years	489	134	343	26	71	10	14	2	11	19	20	76	214	379	86
45 to 54 years	367	121	432	14	73	4	24	10	17	11	22	57	188	276	82
55 to 59 years	82	45	153	6	37	3	10	7	5	2	11	21	82	75	49
60 to 64 years	43	17	74	8	43	3	13	5	2	1	10	22	57	83	34
65 to 74 years	39	29	83	6	47	-	13	7	10	-	15	18	65	70	27
75 years and over	16	29	38	3	16	1	-	5	5	-	16	3	20	42	8

ensus Tracts

	Pensacola – Con.										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
Female, all ages	**3 545**	**1 333**	**3 087**	**466**	**838**	**71**	**190**	**76**	**115**	**103**	**216**	**702**	**1 894**	**3 074**	**999**
Under 5 years	387	100	221	55	54	4	10	4	10	7	16	74	124	266	106
3 and 4 years	153	40	79	21	17	–	3	1	5	1	8	31	42	98	39
5 to 9 years	452	91	295	68	81	11	9	3	8	16	11	85	129	331	116
5 years	94	16	59	18	17	–	2	2	3	6	–	19	16	49	24
6 years	73	18	54	16	15	2	–	–	1	3	3	17	22	62	23
10 to 14 years	413	116	322	74	97	13	9	3	11	19	14	60	170	365	139
14 years	72	23	57	15	23	1	2	3	3	5	1	9	36	73	37
15 to 19 years	276	193	327	48	89	9	21	7	10	5	13	50	196	277	126
15 years	59	23	75	13	20	2	3	3	1	1	3	7	36	50	25
16 years	68	17	65	13	17	2	1	3	1	3	4	15	39	59	26
17 years	60	24	68	7	18	–	8	1	3	1	2	7	38	56	32
18 years	52	65	63	7	18	4	6	–	2	–	4	11	48	71	24
19 years	37	64	56	8	16	1	3	–	3	–	–	10	35	41	19
20 to 24 years	249	197	229	44	65	2	21	7	7	4	18	74	312	336	56
20 years	30	39	47	15	18	–	1	4	4	1	3	15	53	57	11
21 years	40	43	55	6	9	2	4	3	–	1	5	17	67	53	15
25 to 34 years	726	162	335	61	86	3	17	1	15	24	28	145	238	460	95
35 to 44 years	515	165	482	47	97	15	16	7	10	18	17	74	262	429	108
45 to 54 years	315	114	431	38	111	3	30	15	16	7	26	64	191	297	122
55 to 59 years	72	37	137	11	46	4	17	4	5	3	11	21	78	89	40
60 to 64 years	47	36	112	7	30	3	13	7	7	–	11	22	81	67	36
65 to 74 years	63	47	137	7	57	2	18	12	13	–	23	19	68	97	42
75 years and over	30	75	59	6	25	2	9	6	3	–	28	14	45	60	13
RELATIONSHIP TO HEAD OF HOUSEHOLD															
All persons	**6 911**	**2 479**	**5 854**	**831**	**1 579**	**116**	**329**	**135**	**236**	**208**	**395**	**1 391**	**3 783**	**5 978**	**1 862**
In households	6 911	2 225	5 837	831	1 566	113	329	135	236	208	298	1 384	3 682	5 960	1 862
Head of household	1 911	719	1 759	200	492	30	125	56	74	54	106	422	1 255	1 726	470
Head of family	1 810	627	1 568	191	360	24	99	40	67	52	81	378	1 042	1 526	397
Primary individual	101	92	191	9	132	6	26	16	7	2	25	44	213	200	73
Wife of head	1 686	576	1 358	86	224	18	86	28	61	46	56	329	925	1 367	297
Other relative of head	3 278	900	2 659	543	803	65	112	47	98	104	126	611	1 406	2 755	1 072
Not related to head	36	30	61	2	47	–	6	4	3	4	10	22	96	112	23
In group quarters	–	254	17	–	13	3	–	–	–	–	97	7	21	18	–
Persons per household	3.62	3.09	3.32	4.16	3.18	3.77	2.63	2.41	3.19	3.85	2.81	3.28	2.93	3.45	3.96

ensus Tracts

	Pensacola — Con.										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
TYPE OF FAMILY AND NUMBER OF OWN CHILDREN															
All families	1 810	627	1 568	191	360	24	99	40	67	52	81	378	1 042	1 526	397
With own children under 18 years	1 314	353	939	151	190	13	43	12	34	43	39	240	537	972	241
Number of children	2 791	718	1 969	430	478	46	74	25	72	89	67	482	1 064	2 170	717
Husband-wife families	1 686	576	1 358	86	224	18	86	28	61	44	56	329	925	1 367	297
With own children under 18 years	1 221	321	804	62	114	10	37	7	31	38	23	210	471	877	174
Number of children	2 591	649	1 673	166	282	28	63	13	64	74	35	425	935	1 963	531
Percent of total under 18 years	89.9	87.7	79.4	34.4	49.1	51.9	80.8	40.6	80.0	79.6	36.1	81.0	81.9	84.0	61.9
Families with other male head	11	5	26	7	25	2	4	3	1	1	4	9	17	23	6
With own children under 18 years	5	2	11	4	8	–	1	–	–	–	3	6	5	9	2
Number of children	18	3	18	10	21	–	1	–	–	–	10	11	9	13	7
Families with female head	113	46	184	98	111	4	9	9	5	5	21	40	100	136	94
With own children under 18 years	88	30	124	85	68	3	5	5	3	5	13	24	61	86	65
Number of children	182	66	278	254	175	18	10	12	8	15	22	46	120	194	179
Percent of total under 18 years	6.3	8.9	13.2	52.7	30.5	33.3	12.8	37.5	10.0	16.1	22.7	8.8	10.5	8.3	20.9
Persons under 18 years	2 881	740	2 108	482	574	54	78	32	80	93	97	525	1 141	2 336	858
MARITAL STATUS															
Male, 14 years old and over	2 174	851	1 986	149	530	29	119	49	84	74	144	454	1 374	1 986	545
Single	440	222	521	49	163	8	24	11	17	25	30	96	349	468	180
Married	1 706	591	1 397	95	290	19	88	32	63	48	91	340	970	1 421	326
Separated	2	3	13	3	31	–	–	–	1	–	6	–	17	17	13
Widowed	16	21	23	3	34	2	2	1	–	–	15	1	23	19	26
Divorced	12	17	45	2	43	–	5	5	4	1	8	17	32	58	13
Female, 14 years old and over	2 365	1 049	2 306	284	629	44	164	69	89	66	176	492	1 507	2 185	675
Single	421	286	485	82	155	13	38	14	13	10	22	74	293	438	192
Married	1 754	619	1 454	135	322	25	94	32	65	54	92	350	991	1 479	363
Separated	15	13	23	37	58	6	2	1	2	–	11	3	15	34	42
Widowed	113	117	229	27	112	2	23	12	8	–	48	43	156	176	85
Divorced	77	27	138	40	40	4	9	11	2	2	14	25	67	92	35

Table P-1. General Characteristics of the Population: 1970—Continued

[For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Balance of Escambia County—Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
RACE															
All persons	**3 424**	**4 738**	**4 491**	**2 902**	**3 471**	**6 484**	**6 684**	**6 861**	**1 570**	**4 816**	**1 005**	**2 547**	**3 968**	**8 413**	**5 575**
White	614	2 871	3 982	2 879	2 304	6 388	5 871	6 524	1 372	4 389	1 004	2 515	3 033	8 296	5 523
Negro	2 800	1 830	483	-	1 137	49	326	274	138	194	1	15	905	60	9
Percent Negro	81.8	38.6	10.8	-	32.8	0.8	4.9	4.0	8.8	4.0	0.1	0.6	22.8	0.7	0.2
AGE BY SEX															
Male, all ages	**1 658**	**2 288**	**2 152**	**1 394**	**1 639**	**3 148**	**3 164**	**3 217**	**1 570**	**3 650**	**538**	**1 242**	**1 939**	**4 888**	**2 694**
Under 5 years	145	307	198	127	167	340	442	245	2	155	28	91	199	305	274
3 and 4 years	57	134	78	46	62	113	138	73	-	68	13	25	67	137	98
5 to 9 years	218	283	199	130	182	277	344	254	-	201	30	120	223	377	325
5 years	34	54	53	37	36	67	73	51	-	43	3	22	40	76	87
6 years	32	71	43	24	28	45	72	56	-	33	4	16	47	71	67
10 to 14 years	243	314	231	125	180	266	288	258	-	152	43	145	228	404	300
14 years	45	68	44	30	39	54	48	53	-	22	11	34	41	73	62
15 to 19 years	182	248	223	133	167	269	291	269	244	449	34	100	178	997	265
15 years	32	65	54	31	26	49	59	66	-	17	5	29	41	81	56
16 years	35	51	46	28	55	37	60	49	-	19	6	25	38	75	57
17 years	45	43	44	20	27	63	56	60	11	24	6	17	37	69	69
18 years	29	46	38	29	27	50	61	49	62	109	8	19	29	345	47
19 years	41	43	41	25	32	70	55	45	171	280	9	10	33	427	36
20 to 24 years	144	167	190	146	182	458	372	469	994	2 011	122	119	215	1 117	269
20 years	20	27	41	25	31	70	71	67	323	374	14	17	26	445	47
21 years	33	30	43	30	29	67	82	71	298	328	15	21	39	226	52
25 to 34 years	163	267	216	147	215	477	437	396	228	442	107	137	243	496	389
35 to 44 years	167	218	212	129	168	295	283	235	84	168	65	128	201	455	293
45 to 54 years	156	197	243	168	163	352	340	467	11	67	55	185	215	444	296
55 to 59 years	73	98	143	86	51	146	113	200	-	2	21	81	72	97	112
60 to 64 years	54	72	113	79	77	107	95	165	-	1	13	54	74	88	60
65 to 74 years	69	83	120	84	61	112	120	180	3	-	17	63	61	72	77
75 years and over	44	34	64	40	26	49	39	79	4	2	3	19	30	36	34

Census Tracts	Balance of Escambia County—Con													
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
Female, all ages	1 766	2 450	2 339	1 508	1 832	3 336	3 520	3 644	..	1 166	467	1 305	2 029	3 525	2 881
Under 5 years	156	272	183	106	162	283	395	259	..	138	30	91	198	310	269
3 and 4 years	73	110	71	40	71	107	148	80	-	48	9	35	85	121	94
5 to 9 years	221	261	185	100	192	281	351	252	-	162	26	138	189	361	294
5 years	39	54	36	17	31	56	71	47	-	27	5	31	27	67	68
6 years	52	67	37	18	56	59	83	52	-	44	7	26	45	61	49
10 to 14 years	225	321	227	109	202	286	292	277	-	151	28	125	221	406	323
14 years	68	66	58	18	38	48	52	55	-	25	4	25	38	70	65
15 to 19 years	188	240	208	157	201	353	351	316	-	127	39	149	211	384	275
15 years	55	58	46	34	48	69	67	48	-	22	4	27	38	79	65
16 years	40	50	47	27	38	70	56	59	-	13	6	28	48	81	59
17 years	34	38	41	31	31	64	73	66	-	5	7	35	46	76	54
18 years	36	50	44	33	30	65	65	54	-	26	10	35	34	74	46
19 years	23	44	30	32	54	85	90	89	-	61	12	24	45	74	51
20 to 24 years	104	227	201	144	205	466	404	539	-	199	123	114	232	283	306
20 years	28	52	41	28	43	100	82	112	-	70	13	18	48	55	44
21 years	17	51	43	29	45	91	85	116	-	44	22	30	61	54	71
25 to 34 years	182	287	230	133	226	442	440	367	-	222	79	123	242	479	405
35 to 44 years	196	284	252	159	205	329	334	332	-	112	47	175	227	505	374
45 to 54 years	184	239	341	224	185	398	426	541	-	50	45	202	222	437	345
55 to 59 years	66	99	157	110	73	154	159	223	-	1	18	58	92	138	87
60 to 64 years	61	78	125	93	65	133	114	190	-	1	19	54	67	76	81
65 to 74 years	89	92	164	119	76	155	176	232	-	1	12	50	86	99	75
75 years and over	94	50	66	54	40	56	78	116	-	2	1	26	42	47	47
RELATIONSHIP TO HEAD OF HOUSEHOLD															
All persons	3 424	4 738	4 491	2 902	3 471	6 484	6 684	6 861	1 570	4 816	1 005	2 547	3 968	8 413	5 575
In households	3 112	4 728	4 472	2 902	3 471	6 475	6 684	6 851	-	1 901	991	2 547	3 960	6 809	5 565
Head of household	821	1 332	1 507	1 048	1 075	2 238	2 145	2 506	-	444	379	830	1 228	1 990	1 653
Head of family	657	1 160	1 218	841	887	1 871	1 828	2 081	-	439	235	708	1 058	1 831	1 469
Primary individual	164	172	289	207	188	367	317	425	-	5	144	122	170	159	184
Wife of head	456	878	988	719	740	1 643	1 598	1 837	-	415	212	648	908	1 636	1 277
Other relative of head	1 783	2 445	1 913	1 100	1 628	2 502	2 870	2 424	-	1 035	275	1 032	1 780	3 149	2 582
Not related to head	52	73	64	35	28	92	71	84	-	7	125	37	44	34	53
In group quarters	312	10	19	-	-	9	-	10	1 570	2 915	14	-	8	1 604	10
Persons per household	3.79	3.55	2.97	2.77	3.23	2.89	3.12	2.73	-	4.28	2.61	3.07	3.22	3.42	3.37

Census Tracts

	Balance of Escambia County—Con.													
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
TYPE OF FAMILY AND NUMBER OF OWN CHILDREN															
All families	**657**	**1 160**	**1 218**	**841**	**887**	**1 871**	**1 828**	**2 081**	–	**439**	**235**	**708**	**1 058**	**1 831**	**1 469**
With own children under 18 years	409	722	598	378	498	979	1 100	932	–	375	108	362	592	1 166	942
Number of children	1 215	1 862	1 293	764	1 157	1 939	2 341	1 781	–	973	213	806	1 345	2 494	2 025
Husband-wife families	**456**	**878**	**988**	**719**	**740**	**1 643**	**1 598**	**1 837**	–	**415**	**212**	**648**	**908**	**1 636**	**1 277**
With own children under 18 years	284	524	485	316	406	850	947	799	–	351	94	323	503	1 040	817
Number of children	866	1 300	1 047	624	944	1 684	2 019	1 511	–	911	185	702	1 116	2 233	1 765
Percent of total under 18 years	59 8	63 0	69 8	71 9	72 1	80 8	81 3	79 8	–	86 0	84.5	80.6	74.1	85.1	82.3
Families with other male head	**21**	**33**	**38**	**18**	**22**	**30**	**28**	**37**	–	**5**	**5**	**10**	**29**	**25**	**22**
With own children under 18 years	10	13	21	9	9	11	11	19	–	5	1	3	17	9	9
Number of children	27	31	58	21	25	21	19	40	–	13	2	5	49	16	17
Families with female head	**180**	**249**	**192**	**104**	**125**	**198**	**202**	**207**	–	**19**	**18**	**50**	**121**	**170**	**170**
With own children under 18 years	115	185	92	53	83	118	142	114	–	19	13	36	72	117	116
Number of children	322	531	188	119	188	234	303	230	–	49	26	99	180	245	243
Percent of total under 18 years	22 2	25 7	12 5	13 7	14 4	11 2	12 2	12 2	–	4 6	11 9	11 4	12 0	9.3	11.3
Persons under 18 years	1 449	2 063	1 501	868	1 310	2 085	2 483	1 893	13	1 059	219	871	1 506	2 624	2 145
MARITAL STATUS															
Male, 14 years old and over	**1 097**	**1 452**	**1 568**	**1 042**	**1 149**	**2 319**	**2 138**	**2 513**	**1 568**	**3 164**	**448**	**920**	**1 330**	**3 875**	**1 857**
Single	384	431	382	223	308	497	413	480	947	2 316	184	200	305	1 998	453
Married	619	942	1 047	753	779	1 701	1 639	1 905	603	801	226	669	951	1 792	1 330
Separated	58	32	23	11	15	22	14	29	11	12	1	6	17	19	14
Widowed	59	31	53	17	20	42	32	64	–	5	1	14	28	31	30
Divorced	35	48	86	49	42	79	54	64	18	42	37	37	46	54	44
Female, 14 years old and over	**1 232**	**1 662**	**1 802**	**1 211**	**1 314**	**2 534**	**2 534**	**2 911**	–	**740**	**387**	**976**	**1 459**	**2 518**	**2 060**
Single	343	337	289	164	254	391	358	476	–	266	125	190	253	487	395
Married	593	1 044	1 112	776	831	1 726	1 714	1 974	–	467	226	690	990	1 758	1 380
Separated	81	101	62	19	35	19	43	40	–	–	3	11	27	30	34
Widowed	237	189	259	179	156	248	287	319	–	5	18	67	131	170	148
Divorced	59	92	142	92	71	169	175	142	–	2	18	29	85	103	137

Table P-1. General Characteristics of the Population: 1970—Continued

[For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Balance of Escambia County—Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
RACE															
All persons	6 753	4 886	7 340	7 841	4 489	9 913	9 466	3 967	2 879	3 814	4 201	2 194	3 399	1 185	4 669
White	6 600	4 796	3 890	7 762	3 901	8 614	9 019	2 472	2 401	3 244	2 712	2 185	3 363	1 083	4 371
Negro	99	54	3 421	30	554	1 108	419	1 491	458	537	1 484	3	29	17	142
Percent Negro	1.5	1.1	46.6	0.4	12.3	11.2	4.4	37.6	15.9	14.1	35.3	0.1	0.9	1.5	3.0
AGE BY SEX															
Male, all ages	3 281	2 405	3 685	3 921	2 214	5 503	4 773	2 002	1 481	1 875	1 981	1 110	1 719	553	3 852
Under 5 years	348	319	453	371	231	454	436	223	123	165	186	87	146	44	265
3 and 4 years	135	110	187	138	95	196	193	90	49	71	74	36	51	19	72
5 to 9 years	421	349	567	499	273	525	542	231	165	191	248	118	176	72	172
5 years	72	71	121	93	51	100	110	46	26	39	42	18	42	11	41
6 years	83	64	118	94	53	120	85	48	23	38	43	18	35	11	32
10 to 14 years	425	319	545	512	248	523	629	291	190	245	243	126	198	84	138
14 years	90	48	96	91	53	108	128	49	31	47	40	21	46	16	28
15 to 19 years	295	154	327	344	210	594	499	233	178	224	253	119	175	41	325
15 years	80	50	78	73	42	87	126	57	48	54	53	27	49	12	27
16 years	71	40	90	88	58	82	118	40	40	39	61	29	39	10	10
17 years	63	23	86	75	52	88	99	45	37	58	51	28	34	9	26
18 years	51	27	44	57	25	136	77	44	36	42	42	22	29	5	74
19 years	30	14	29	51	33	201	79	47	17	31	46	13	24	5	188
20 to 24 years	227	167	199	377	200	1 235	495	175	103	109	123	82	104	35	1 398
20 years	36	18	36	43	30	369	105	33	18	24	24	17	20	3	394
21 years	47	21	38	59	36	305	117	40	22	27	24	17	13	9	301
25 to 34 years	489	476	569	569	363	782	626	223	163	208	204	120	228	69	436
35 to 44 years	448	363	474	468	251	587	628	222	166	198	171	115	167	70	159
45 to 54 years	396	170	308	410	213	409	480	196	148	198	193	117	173	55	69
55 to 59 years	98	38	89	122	57	144	158	81	73	99	89	66	116	33	30
60 to 64 years	51	19	63	96	68	100	107	50	51	67	72	45	98	18	22
65 to 74 years	59	20	65	101	70	108	115	57	84	119	136	68	79	19	26
75 years and over	24	11	26	52	30	42	58	20	37	52	63	47	59	13	12

ensus Tracts	Balance of Escambia County – Con											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
Female, all ages	3 472	2 481	3 655	3 920	2 275	4 410	4 693	1 965	1 398	1 939	2 220	1 084	1 680	552	1 617
Under 5 years	300	288	355	371	214	465	361	222	129	148	194	87	118	40	234
3 and 4 years	129	121	143	157	84	185	144	83	48	59	76	38	55	17	75
5 to 9 years	415	351	546	485	262	513	498	240	142	214	234	105	162	68	182
5 years	73	60	108	95	54	91	91	49	30	37	45	23	41	13	39
6 years	85	79	96	92	54	110	104	41	21	46	42	15	15	13	44
10 to 14 years	415	303	480	449	240	509	541	238	171	225	261	114	172	74	142
14 years	88	47	90	83	46	110	110	47	40	44	53	31	40	10	17
15 to 19 years	352	203	351	367	203	395	456	224	121	199	224	94	136	54	169
15 years	75	57	80	86	47	105	85	49	18	56	48	28	29	14	24
16 years	81	51	84	73	41	72	113	58	19	51	43	22	22	9	26
17 years	73	34	60	76	47	74	92	42	31	37	58	11	32	19	23
18 years	69	31	62	63	46	72	88	41	25	33	43	21	26	8	30
19 years	54	30	65	69	28	72	78	34	28	22	32	12	27	4	66
20 to 24 years	290	246	304	429	244	387	582	187	88	133	161	68	111	34	336
20 years	51	36	51	84	90	85	151	41	23	41	35	15	17	9	68
21 years	64	44	48	98	44	74	155	41	15	22	29	15	23	6	78
25 to 34 years	539	511	610	606	346	735	676	223	166	211	217	142	225	82	281
35 to 44 years	523	329	465	511	271	545	843	242	168	213	215	109	191	68	114
45 to 54 years	374	164	289	358	209	421	453	196	151	216	233	124	176	60	67
55 to 59 years	100	30	89	120	81	120	144	64	78	101	121	56	117	17	25
60 to 64 years	69	26	42	82	69	109	115	47	50	76	96	61	96	20	26
65 to 74 years	60	21	83	107	75	109	128	59	84	143	188	80	96	21	27
75 years and over	35	9	41	35	57	68	96	23	50	60	76	44	80	14	14
RELATIONSHIP TO HEAD OF HOUSEHOLD															
All persons	6 753	4 886	7 340	7 841	4 489	9 913	9 466	3 967	2 879	3 814	4 201	2 194	3 399	1 105	4 649
In households	6 746	4 886	7 324	7 841	4 477	8 645	9 015	3 882	2 878	3 814	4 189	2 194	3 399	1 105	3 126
Head of household	1 908	1 295	1 853	2 262	1 327	2 480	2 545	1 005	845	1 130	1 254	670	1 064	299	923
Head of family	1 766	1 257	1 706	2 055	1 189	2 244	2 338	904	743	967	1 017	596	921	273	888
Primary individual	142	38	147	207	138	236	207	101	102	163	237	74	143	26	35
Wife of head	1 579	1 147	1 522	1 888	1 056	2 015	2 141	768	649	836	793	522	831	260	858
Other relative of head	3 194	2 412	3 885	3 619	2 044	4 059	4 255	2 074	1 372	1 826	2 087	990	1 484	543	1 334
Not related to head	65	32	64	77	50	91	74	35	12	22	55	12	20	3	11
In group quarters	7	-	16	-	12	1 268	451	85	1	-	12	-	-	-	1 543
Persons per household	3.54	3.77	3.95	3.47	3.37	3.49	3.54	3.86	3.41	3.38	3.34	3.27	3.19	3.70	3.39

ensus Tracts

	Balance of Escambia County – Con										Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
TYPE OF FAMILY AND NUMBER OF OWN CHILDREN															
All families	1 766	1 257	1 706	2 055	1 189	2 244	2 338	904	743	967	1 017	596	921	273	888
With own children under 18 years	1 196	981	1 190	1 314	725	1 468	1 532	583	420	535	561	317	493	166	569
Number of children	2 626	2 105	3 128	2 983	1 628	3 267	3 396	1 520	1 009	1 331	1 440	706	1 077	412	1 168
Husband-wife families	1 579	1 147	1 522	1 888	1 056	2 015	2 141	768	649	836	793	522	831	260	858
With own children under 18 years	1 057	900	1 074	1 199	643	1 324	1 411	492	370	476	441	290	456	163	554
Number of children	2 319	1 933	2 782	2 729	1 454	2 942	3 124	1 231	909	1 191	1 116	649	992	404	1 133
Percent of total under 18 years	83.8	88.5	81.3	86.4	82.8	84.1	85.8	70.9	81.7	80.3	66.4	83.0	84.3	88.8	89.3
Families with other male head	26	24	34	43	26	35	42	29	25	23	26	10	21	5	11
With own children under 18 years	16	15	13	19	17	14	19	15	10	11	12	3	7	1	4
Number of children	37	35	34	48	29	24	42	43	20	22	28	6	14	1	8
Families with female head	161	86	150	124	107	194	155	107	69	108	196	64	69	8	19
With own children under 18 years	123	66	103	96	65	130	102	76	40	48	108	24	30	2	11
Number of children	270	137	312	206	145	301	230	246	80	118	296	51	71	7	27
Percent of total under 18 years	9.8	6.3	9.1	6.5	8.3	8.6	6.3	14.2	7.2	8.0	17.6	6.5	6.0	1.5	2.1
Persons under 18 years	2 767	2 184	3 424	3 158	1 755	3 497	3 640	1 736	1 113	1 483	1 680	782	1 177	455	1 269
MARITAL STATUS															
Male, 14 years old and over	2 177	1 486	2 216	2 630	1 515	4 109	3 294	1 306	1 034	1 321	1 344	800	1 245	369	2 505
Single	495	249	536	570	357	1 816	971	388	291	374	409	213	310	90	1 483
Married	1 625	1 179	1 590	1 944	1 106	2 168	2 220	848	687	874	853	542	882	268	967
Separated	15	11	28	17	15	26	17	26	17	12	20	5	9	2	17
Widowed	17	14	42	45	16	35	41	18	26	38	48	28	37	10	13
Divorced	40	24	48	71	36	90	62	52	30	35	34	17	16	1	42
Female, 14 years old and over	2 430	1 586	2 364	2 698	1 605	3 033	3 403	1 312	996	1 396	1 584	809	1 268	380	1 076
Single	486	266	500	473	269	570	807	306	173	296	346	136	196	75	144
Married	1 683	1 210	1 656	1 992	1 123	2 146	2 248	866	689	902	916	554	883	274	882
Separated	22	10	50	23	25	51	70	53	16	27	74	6	6	2	5
Widowed	137	43	158	141	145	211	237	98	118	173	271	110	163	28	39
Divorced	124	67	50	92	68	106	111	42	16	25	51	9	26	3	11

Table P-1. General Characteristics of the Population: 1970—Continued

[For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Santa Rosa County—Con					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
RACE															
All persons	**3 268**	**6 588**	**7 071**	**5 257**	**4 190**	**5 932**	**8 302**	**6 182**	**6 809**	**3 441**	**3 540**	**4 820**	**3 037**	**6 730**	**10 121**
White	3 063	5 659	6 696	4 890	4 180	422	8 283	6 090	5 286	137	619	4 310	3 013	6 620	8 822
Negro	179	895	356	356	2	5 506	2	63	1 487	3 304	2 911	484	-	49	1 108
Percent Negro	5.5	13.6	5.0	6.8	-	92.9	-	1.0	21.8	96.0	82.2	10.0	-	0.7	10.9
AGE BY SEX															
Male, all ages	**1 652**	**3 131**	**3 486**	**2 631**	**2 050**	**2 673**	**4 055**	**2 955**	**3 219**	**1 604**	**1 703**	**2 291**	**1 453**	**3 269**	**5 008**
Under 5 years	204	307	330	218	155	288	460	262	335	156	152	204	129	353	460
3 and 4 years	87	131	127	80	61	124	183	94	123	68	60	80	47	118	199
5 to 9 years	209	407	387	282	227	276	568	264	428	184	222	204	134	295	539
5 years	34	66	77	51	35	71	106	50	82	40	35	54	37	70	102
6 years	41	78	78	60	40	66	109	54	88	36	32	43	25	48	126
10 to 14 years	205	381	437	350	294	402	491	262	466	238	249	245	131	276	537
14 years	39	73	88	70	55	75	92	58	95	49	46	49	32	58	111
15 to 19 years	138	270	316	245	216	300	305	319	303	186	188	237	136	276	611
15 years	31	76	69	54	44	76	75	65	79	48	34	57	33	51	91
16 years	27	63	72	53	50	65	92	50	60	48	36	48	28	40	86
17 years	31	50	50	57	49	71	53	71	73	27	47	52	21	63	92
18 years	27	35	68	41	44	46	55	64	47	35	30	38	29	52	139
19 years	22	46	57	24	29	44	50	69	44	28	41	42	25	70	203
20 to 24 years	176	339	364	231	115	181	222	419	263	93	144	201	153	469	1 242
20 years	24	45	61	45	16	44	39	49	49	22	20	42	26	71	371
21 years	44	52	67	42	18	38	30	54	46	18	33	44	32	70	307
25 to 34 years	235	471	463	320	236	231	776	428	466	174	164	231	148	489	796
35 to 44 years	203	345	398	318	306	252	565	348	405	157	177	226	131	306	606
45 to 54 years	148	296	338	290	293	260	424	309	290	155	160	267	178	369	420
55 to 59 years	43	89	131	114	87	107	103	127	81	86	76	153	93	151	146
60 to 64 years	32	76	87	75	44	98	65	74	91	77	57	126	84	109	101
65 to 74 years	39	104	148	135	63	113	57	94	76	74	69	133	91	122	108
75 years and over	20	46	82	42	14	63	19	49	45	24	45	64	45	54	42

Census Tracts	Santa Rosa County – Con					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
Female, all ages	**1 616**	**3 457**	**3 585**	**2 626**	**2 140**	**3 259**	**4 247**	**3 227**	**3 540**	**1 837**	**1 837**	**2 529**	**1 584**	**3 451**	**4 513**
Under 5 years	149	293	305	217	141	298	461	224	321	160	160	193	110	293	472
3 and 4 years	45	115	137	92	62	128	184	82	119	56	73	74	41	112	186
5 to 9 years	195	393	380	259	233	374	537	220	399	197	232	194	103	289	529
5 years	38	78	65	41	41	68	113	32	67	41	39	38	19	59	97
6 years	44	79	84	55	46	79	90	40	78	38	54	37	18	60	113
10 to 14 years	201	383	399	298	283	396	473	286	439	236	238	236	112	297	528
14 years	38	67	81	62	47	80	81	59	88	60	69	60	21	51	115
15 to 19 years	142	309	346	256	231	325	326	389	325	215	197	229	164	363	400
15 years	20	51	71	58	62	80	66	59	63	45	57	49	37	70	106
16 years	28	88	84	53	53	69	83	56	72	43	42	48	30	71	75
17 years	29	62	71	47	54	71	67	62	63	50	34	49	32	67	75
18 years	32	55	58	49	29	54	63	113	78	42	40	50	33	67	72
19 years	33	53	62	49	33	51	47	99	49	35	24	33	32	88	72
20 to 24 years	183	380	374	228	139	243	323	509	380	121	106	222	151	473	391
20 years	43	65	76	46	31	57	45	92	72	29	28	42	32	104	86
21 years	35	65	89	51	23	54	57	110	59	24	19	47	32	91	75
25 to 34 years	255	507	498	353	275	361	871	400	521	181	185	247	134	457	763
35 to 44 years	217	431	393	321	349	347	589	427	476	205	211	268	166	339	563
45 to 54 years	131	306	350	304	282	335	379	305	335	233	187	371	239	414	428
55 to 59 years	39	110	153	103	83	142	93	115	100	86	70	174	114	159	123
60 to 64 years	34	102	112	85	33	131	69	117	74	66	64	138	100	140	109
65 to 74 years	41	155	185	133	62	190	82	115	104	99	91	182	131	168	139
75 years and over	29	88	90	69	29	117	44	120	66	38	96	75	60	59	68
RELATIONSHIP TO HEAD OF HOUSEHOLD															
All persons	**3 268**	**6 588**	**7 071**	**5 257**	**4 190**	**5 932**	**8 302**	**6 182**	**6 809**	**3 441**	**3 540**	**4 820**	**3 037**	**6 720**	**10 121**
In households	3 268	6 588	7 056	5 253	4 190	5 829	8 295	5 907	6 791	3 428	3 225	4 801	3 037	6 711	8 853
Head of household	930	2 027	2 164	1 577	1 192	1 657	2 333	1 974	1 926	962	851	1 632	1 104	2 312	2 534
Head of family	837	1 740	1 852	1 384	1 107	1 320	2 188	1 669	1 717	757	681	1 317	881	1 938	2 296
Primary individual	93	287	312	193	85	337	145	305	209	205	170	315	223	374	238
Wife of head	760	1 491	1 615	1 223	1 027	811	2 015	1 501	1 453	521	474	1 074	747	1 704	2 061
Other relative of head	1 545	2 993	3 193	2 423	1 945	3 270	3 889	2 306	3 298	1 875	1 848	2 025	1 147	2 600	4 163
Not related to head	33	77	84	30	26	91	58	126	114	70	52	70	39	95	95
In group quarters	-	-	15	4	-	103	7	275	18	13	315	19	-	9	1 268
Persons per household	3.51	3.25	3.26	3.33	3.52	3.52	3.56	2.99	3.53	3.56	3.79	2.94	2.75	2.90	3.49

Census Tracts	Santa Rosa County—Con					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
TYPE OF FAMILY AND NUMBER OF OWN CHILDREN															
All families	**837**	**1 740**	**1 852**	**1 384**	**1 107**	**1 320**	**2 188**	**1 669**	**1 717**	**757**	**681**	**1 317**	**881**	**1 938**	**2 296**
With own children under 18 years	537	1 049	1 083	771	720	766	1 554	890	1 123	431	422	641	390	1 010	1 511
Number of children	1 224	2 376	2 460	1 806	1 607	2 064	3 273	1 782	2 600	1 195	1 261	1 367	789	2 011	3 356
Husband-wife families	**760**	**1 491**	**1 615**	**1 223**	**1 027**	**811**	**2 015**	**1 501**	**1 453**	**521**	**474**	**1 074**	**747**	**1 704**	**2 061**
With own children under 18 years	491	900	944	680	665	457	1 431	792	939	288	294	522	323	881	1 362
Number of children	1 091	1 992	2 143	1 608	1 486	1 239	3 016	1 584	2 129	813	994	1 110	637	1 748	3 016
Percent of total under 18 years	82.1	78.0	80.6	81.8	90.3	48.3	88.5	84.2	75.6	56.8	59.5	70.3	70.8	80.7	84.0
Families with other male head	**15**	**23**	**46**	**41**	**11**	**65**	**20**	**22**	**30**	**31**	**23**	**42**	**21**	**31**	**36**
With own children under 18 years	6	10	25	16	4	27	11	7	13	10	10	22	9	11	14
Number of children	22	23	57	27	10	64	29	12	23	28	27	59	21	21	24
Families with female head	**62**	**226**	**191**	**120**	**69**	**444**	**153**	**146**	**234**	**205**	**184**	**201**	**113**	**203**	**199**
With own children under 18 years	40	139	114	75	51	282	112	91	171	133	118	97	58	121	135
Number of children	111	361	260	171	111	761	228	186	448	254	340	198	131	242	316
Percent of total under 18 years	8.4	14.1	9.8	8.7	6.7	29.7	6.7	9.9	15.9	24.7	27.6	12.5	14.6	11.2	8.8
Persons under 18 years	1 329	2 554	2 660	1 965	1 645	2 566	3 406	1 861	2 619	1 402	1 603	1 579	900	2 165	3 590
MARITAL STATUS															
Male, 14 years old and over	**1 073**	**2 109**	**2 417**	**1 842**	**1 429**	**1 682**	**2 628**	**2 225**	**2 115**	**1 075**	**1 126**	**1 687**	**1 091**	**2 403**	**4 183**
Single	243	478	582	466	349	566	536	571	517	343	392	406	234	514	1 641
Married	785	1 550	1 699	1 290	1 044	984	2 046	1 561	1 516	616	638	1 135	785	1 764	2 216
Separated	8	25	36	24	1	73	2	20	20	44	58	23	11	23	26
Widowed	14	43	62	56	13	77	17	44	22	60	61	55	18	42	35
Divorced	31	38	74	30	23	55	29	49	60	56	35	91	54	83	91
Female, 14 years old and over	**1 109**	**2 455**	**2 582**	**1 914**	**1 530**	**2 271**	**2 857**	**2 556**	**2 469**	**1 304**	**1 274**	**1 966**	**1 280**	**2 623**	**3 099**
Single	174	435	463	328	333	567	495	579	520	347	356	327	178	404	580
Married	816	1 637	1 753	1 327	1 063	1 147	2 104	1 610	1 614	685	618	1 206	808	1 791	2 200
Separated	15	59	42	31	10	198	15	28	71	100	87	64	20	21	51
Widowed	78	279	276	201	80	362	156	273	202	197	239	282	191	256	211
Divorced	41	104	90	58	54	195	102	94	132	75	63	151	103	172	108

Table P-2. Social Characteristics of the Population: 1970

[Data based on sample. see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
NATIVITY, PARENTAGE, & COUNTRY OF ORIGIN															
All persons	**243 075**	**205 334**	**59 613**	**145 721**	**37 741**	**269**	**3 813**	**4 659**	**5 544**	**2 246**	**5 054**	**3 229**	**5 596**	**3 372**	**7 829**
Native of native parentage	230 490	194 085	56 215	137 870	36 405	240	3 680	4 354	5 502	2 068	5 030	3 099	5 098	2 974	6 381
Native of foreign or mixed parentage	9 198	8 190	2 542	5 648	1 008	22	120	230	42	133	16	84	338	309	495
Foreign born	3 387	3 059	856	2 203	328	7	13	75	-	45	8	46	160	89	153
Foreign stock	**12 585**	**11 249**	**3 398**	**7 851**	**1 336**	**29**	**133**	**305**	**42**	**178**	**24**	**130**	**498**	**398**	**648**
United Kingdom	1 624	1 462	516	946	162	-	36	34	-	44	-	7	55	69	113
Ireland (Eire)	332	286	89	197	46	-	10	8	-	14	-	5	13	32	-
Sweden	336	304	100	204	32	-	-	36	6	-	-	-	15	6	12
Germany	1 574	1 336	436	900	238	-	20	54	-	21	-	13	39	45	83
Poland	356	291	146	145	65	-	7	-	-	11	-	-	43	29	14
Czechoslovakia	91	91	6	85	-	-	-	-	-	-	-	-	-	-	-
Austria	252	221	62	159	31	-	-	-	9	10	-	5	-	8	24
Hungary	189	182	58	124	7	-	-	-	-	-	-	7	21	-	11
U S S R	262	254	139	115	8	-	-	5	-	33	-	-	21	13	33
Italy	1 013	961	333	628	52	-	28	50	-	5	-	12	19	67	103
Canada	1 497	1 273	341	932	224	-	-	22	-	11	-	-	49	46	75
Mexico	197	185	33	152	12	-	-	25	-	-	-	-	-	-	-
Cuba	203	203	126	77	-	-	-	-	-	-	-	51	30	10	26
Other America	351	330	117	213	21	-	-	-	20	10	8	-	-	27	6
All other and not reported	4 308	3 870	896	2 974	438	29	32	71	7	19	16	30	193	46	148
Persons of Spanish language	3 482	3 183	1 093	2 090	299	-	93	70	53	-	60	129	65	117	91
Other persons of Spanish surname	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Persons of Spanish mother tongue	1 898	1 735	588	1 147	163	-	32	32	22	-	26	113	50	57	53
Persons of Puerto Rican birth or parentage	369	313	42	271	56	-	7	-	-	-	-	8	6	-	7

Census Tracts

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
SCHOOL ENROLLMENT															
Enrolled persons, 3 to 34 years old	72 042	60 992	17 777	43 215	11 050	28	1 018	1 045	1 822	624	1 517	830	1 290	816	2 446
Nursery school	690	644	288	356	46	-	-	19	5	-	25	16	17	22	72
Public	180	164	69	95	16	-	-	19	5	-	9	16	7	-	13
Kindergarten	2 967	2 310	732	1 578	657	5	38	40	98	23	54	11	13	24	108
Public	1 147	687	176	511	460	-	13	5	39	8	23	6	8	-	15
Elementary	43 537	36 657	10 217	26 440	6 880	11	673	640	1 182	309	994	692	591	341	1 351
Public	38 161	31 603	8 066	23 537	6 558	7	523	443	1 117	222	947	670	433	112	914
High school	17 816	15 182	4 555	10 627	2 634	6	211	272	477	184	408	64	454	281	602
Public	16 195	13 669	3 757	9 912	2 526	6	185	201	471	171	401	54	342	152	412
College	7 032	6 199	1 985	4 214	833	6	96	74	60	108	36	47	215	148	313
Percent enrolled in school by age															
16 and 17 years	87.5	86.5	86.7	86.4	93.4	...	78.5	83.9	86.4	70.9	90.0	44.4	89.6	99.9	89.7
18 and 19 years	44.5	44.7	59.0	40.0	43.3	-	44.8	52.6	30.0	86.2	30.9	21.3	63.5	68.7	78.0
20 and 21 years	17.2	18.8	29.5	16.0	9.4	-	28.9	2.5	8.6	54.5	21.0	11.9	41.3	47.0	31.0
22 to 24 years	9.7	10.3	13.3	9.5	6.9	10.5	15.6	2.4	5.7	50.7	18.9	5.2	15.4	12.7	11.0
25 to 34 years	7.5	7.9	9.3	7.4	5.7	-	9.5	8.2	4.1	8.2	3.6	1.3	10.1	20.3	14.1
Percent 16 to 21 years not high school graduates and not enrolled in school	16.0	16.3	15.3	16.7	14.4	.	25.7	26.7	29.2	7.2	18.0	33.8	9.0	1.4	3.4
YEARS OF SCHOOL COMPLETED															
Persons 25 years old and over	117 176	99 411	31 937	67 474	17 765	158	2 234	2 624	2 497	1 361	2 722	1 605	3 448	2 194	3 676
No school years completed	1 930	1 714	603	1 111	216	5	118	43	85	20	118	59	34	16	19
Elementary: 1 to 4 years	5 900	5 065	1 875	3 190	835	-	163	165	319	54	433	228	120	17	40
5 to 7 years	13 662	11 645	3 408	8 237	2 017	40	417	411	416	69	546	331	277	95	153
8 years	11 077	9 493	2 883	6 610	1 584	18	308	414	289	96	209	235	475	112	154
High school: 1 to 3 years	24 845	21 473	5 870	15 603	3 372	119	446	546	591	245	667	416	817	267	505
4 years	37 339	31 306	9 371	21 935	6 033	49	541	763	568	413	597	255	953	792	1 129
College: 1 to 3 years	11 576	9 615	3 635	5 980	1 961	12	139	178	152	171	80	42	366	383	671
4 years or more	10 847	9 100	4 292	4 808	1 747	15	102	104	77	293	72	39	406	512	1 005
Median school years completed	12.0	12.0	12.1	11.8	12.1	11.5	9.7	10.5	9.7	12.5	9.2	9.8	12.0	12.7	12.9
Percent high school graduates	51.0	50.3	54.2	48.5	54.8	48.1	35.0	39.8	31.9	64.4	27.5	20.9	50.0	76.9	76.3

Census Tracts

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
CHILDREN EVER BORN															
Women 35 to 44 years old ever married	13 898	11 758	3 415	8 343	2 140	4	154	229	291	115	250	122	242	157	551
Children ever born	44 899	38 378	11 157	27 221	6 521	8	566	781	1 213	414	1 128	587	704	447	1 707
Per 1 000 women ever married	3 231	3 264	3 267	3 263	3 047	...	3 675	3 410	4 168	3 600	4 512	4 811	2 909	2 847	3 098
RESIDENCE IN 1965															
Persons 5 years old and over, 1970[1]	221 614	187 204	54 859	132 345	34 410	258	3 614	4 304	4 990	2 128	4 612	2 907	5 232	3 216	6 560
Same house as in 1970	102 230	88 010	28 758	59 252	14 220	128	1 960	2 772	2 967	1 412	2 409	1 534	3 025	2 139	2 953
Different house															
In central city of this SMSA	24 724	23 390	10 765	12 625	1 334	13	872	670	1 274	385	1 307	850	919	334	937
In other part of this SMSA	28 629	21 532	2 734	18 798	7 097	14	237	133	42	67	251	105	250	118	476
Outside this SMSA	50 124	40 470	9 261	31 209	9 654	56	262	506	341	224	223	287	777	570	1 814
North and West	20 153	16 098	3 329	12 769	4 055	–	132	241	39	111	43	117	236	204	790
South	29 971	24 372	5 932	18 440	5 599	56	130	265	302	113	180	170	541	366	1 024
Abroad	4 058	3 494	487	3 007	564	–	6	44	38	–	10	3	58	–	134
MEANS OF TRANSPORTATION AND PLACE OF WORK															
All workers	91 433	76 981	21 821	55 160	14 452	82	1 355	1 797	1 765	825	1 659	1 034	2 117	1 459	2 681
Private auto Driver	66 238	56 633	14 826	41 807	9 605	32	639	1 164	740	608	673	486	1 564	1 152	2 292
Passenger	14 237	11 576	4 023	7 553	2 661	4	305	393	645	109	463	179	400	188	234
Bus or streetcar	1 163	1 021	571	450	142	9	61	53	92	19	158	61	51	–	14
Taxicab, elevated train or railroad	48	48	21	27	–	–	–	–	–	–	–	–	–	–	–
Walked to work	4 956	4 134	1 234	2 900	822	21	238	68	235	41	239	217	23	–	29
Worked at home	1 386	1 091	281	810	295	16	38	35	..	34	4	–	14	37	28
Other	3 405	2 478	865	1 613	927	–	74	84	53	14	122	91	65	82	84
Inside SMSA	81 612	69 176	19 445	49 731	12 436	75	1 222	1 569	1 528	789	1 318	936	1 895	1 287	2 386
Pensacola city	29 950	28 300	12 064	16 236	1 650	75	798	897	971	522	841	697	1 373	799	1 392
Remainder of Escambia County	41 647	39 509	6 775	32 734	2 138	–	385	659	524	242	434	212	516	457	869
Santa Rosa County	10 015	1 367	606	761	8 648	–	39	13	33	25	43	27	6	31	125
Outside SMSA	3 680	2 852	545	2 307	828	–	36	34	78	18	27	16	42	40	107
Place of work not reported	6 141	4 953	1 831	3 122	1 188	7	97	194	159	18	314	82	180	132	188

See text for definition. [1]Includes "Moved, 1965 residence not reported."

Table P-2. Social Characteristics of the Population: 1970—Continued

[Data based on sample; see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Pensacola — Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
NATIVITY, PARENTAGE, & COUNTRY OF ORIGIN															
All persons	**6 882**	**2 545**	**5 827**	**779**	**1 577**	**92**	**366**	**186**	**314**	**234**	**366**	**1 389**	**3 741**	**5 814**	**1 984**
Native of native parentage	6 413	2 407	5 495	779	1 571	92	303	186	309	234	351	1 370	3 583	5 398	1 977
Native of foreign or mixed parentage	332	94	275	-	6	-	41	-	5	-	-	19	128	324	7
Foreign born	137	44	57	-	-	-	22	-	-	-	15	-	30	92	-
Foreign stock	**469**	**138**	**332**	-	**6**	-	**63**	-	**5**	-	**15**	**19**	**158**	**416**	**7**
United Kingdom	55	23	80	-	-	-	-	-	-	-	-	-	15	64	-
Ireland (Eire)	7	-	-	-	-	-	-	-	-	-	-	-	9	24	-
Sweden	19	-	6	-	-	-	-	-	-	-	-	-	-	5	-
Germany	106	21	27	-	-	-	7	-	-	-	-	6	17	64	-
Poland	42	-	-	-	-	-	-	-	-	-	-	-	14	-	-
Czechoslovakia	-	-	6	-	-	-	-	-	-	-	-	-	6	-	-
Austria	-	-	6	-	-	-	-	-	-	-	8	-	-	-	-
Hungary	6	6	-	-	-	-	7	-	-	-	-	-	7	-	-
U.S.S.R.	5	22	7	-	-	-	-	-	-	-	7	-	7	-	-
Italy	19	13	17	-	-	-	-	-	-	-	-	-	22	35	-
Canada	69	9	60	-	-	-	-	-	-	-	-	-	27	35	-
Mexico	-	-	-	-	-	-	8	-	-	-	-	-	-	5	-
Cuba	-	-	-	-	-	-	9	-	-	-	-	-	-	-	-
Other America	8	12	20	-	6	-	-	-	-	-	-	9	-	45	-
All other and not reported	133	32	103	-	-	-	32	-	5	-	-	4	34	139	7
Persons of Spanish language	140	60	34	6	12	-	54	-	109	-	17	-	48	102	-
Other persons of Spanish surname	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Persons of Spanish mother tongue	66	19	28	6	6	-	45	-	33	-	9	-	27	51	-
Persons of Puerto Rican birth or parentage	6	8	-	-	-	-	-	-	-	-	-		-	6	-

Census Tracts	Pensacola — Con.										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
SCHOOL ENROLLMENT															
Enrolled persons, 3 to 34 years old	**2 453**	**894**	**1 877**	**286**	**462**	**31**	**66**	**64**	**107**	**99**	**73**	**412**	**1 092**	**1 934**	**741**
Nursery school	70	18	24	–	–	–	–	–	–	–	–	–	16	7	–
Public	–	–	–	–	–	–	–	–	–	–	–	–	–	7	–
Kindergarten	174	39	90	–	–	–	–	–	8	7	–	30	25	54	23
Public	15	12	24	–	–	–	–	–	8	–	–	–	–	7	23
Elementary	1 360	301	1 063	230	308	12	30	30	72	27	45	281	503	1 290	447
Public	1 224	262	636	195	275	12	–	12	41	21	33	268	415	1 027	421
High school	524	267	490	49	111	19	36	30	18	52	21	41	354	405	261
Public	506	239	394	49	82	19	6	30	–	37	21	27	321	363	254
College	325	269	210	7	43	–	–	6	9	13	7	60	194	178	10
Percent enrolled in school by age															
16 and 17 years	89.9	83.3	94.9	19.4	61.0	–	...	...	..	....	...	76.9	83.0	81.0	99.9
18 and 19 years	84.8	94.1	42.9	40.0	57.1	...	–	–	...	....	–	31.5	74.1	36.8	67.6
20 and 21 years	47.9	54.4	33.1	–	37.0	–	–	–	–	....	...	16.3	57.6	24.7	–
22 to 24 years	18.9	23.0	7.3	–	22.7	–	–	...	–	....	–	9.3	5.5	15.1	–
25 to 34 years	9.6	9.3	16.1	7.5	2.8	–	–	–	–	–	–	12.0	9.2	8.3	–
Percent 16 to 21 years not high school graduates and not enrolled in school	7.2	2.0	8.6	44.7	39.6	...	–	51.5	–	–	53.4	22.9	7.1	14.5	17.0
YEARS OF SCHOOL COMPLETED															
Persons, 25 years old and over	**3 412**	**1 246**	**3 050**	**255**	**850**	**44**	**219**	**84**	**158**	**100**	**239**	**697**	**1 902**	**2 761**	**862**
No school years completed	20	17	16	6	9	18	–	..	–	–	13	10	11	36	54
Elementary 1 to 4 years	25	20	35	31	201	7	–	4	13	–	46	39	36	85	136
5 to 7 years	72	40	229	58	181	6	10	19	38	–	43	81	190	330	151
8 years	86	136	202	20	69	4	34	18	4	–	4	51	197	273	144
High school 1 to 3 years	351	218	482	59	161	9	24	16	31	–	65	160	372	592	161
4 years	1 304	394	1 154	64	176	–	86	27	51	55	42	231	659	897	172
College 1 to 3 years	649	212	468	12	38	–	17	–	21	24	16	66	171	231	21
4 years or more	905	209	464	5	15	–	48	–	–	21	10	59	266	317	23
Median school years completed	12.9	12.5	12.5	9.6	8.5	3.3	12.5	9.2	11.3	12.9	9.6	12.0	12.2	12.1	8.6
Percent high school graduates	83.8	65.4	68.4	31.8	26.9	–	68.9	32.1	45.6	100.0	28.5	51.1	57.6	52.3	25.1
CHILDREN EVER BORN															
Women, 35 to 44 years old ever married	**485**	**146**	**497**	**52**	**65**	**15**	**12**	**6**	**11**	**11**	–	**57**	**301**	**396**	**148**
Children ever born	1 211	350	1 527	141	216	44	38	30	27	18	–	126	831	1 312	546
Per 1,000 women ever married	2 497	2 397	3 072	2 712	3 323	...	...	...	...	...	–	2 211	2 761	3 313	3 900

Census Tracts

	Pensacola — Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
RESIDENCE IN 1965															
Persons, 5 years old and over, 1970[2]	**6 126**	**2 367**	**5 338**	**628**	**1 475**	**92**	**343**	**178**	**272**	**219**	**366**	**1 230**	**3 477**	**5 299**	**1 796**
Same house as in 1970	1 977	709	3 148	161	946	21	174	51	167	105	187	49[illegible]	1 491	2 486	1 405
Different house:															
In central city of this SMSA	1 208	384	932	230	287	59	61	25	10	8	74	212	514	686	197
In other part of this SMSA	305	210	239	154	91	-	20	-	-	22	35	194	313	603	85
Outside this SMSA	2 141	813	816	50	67	6	64	90	70	84	47	280	987	1 019	96
North and West	814	300	215	12	3	-	7	7	28	30	8	124	313	319	32
South	1 327	513	601	38	64	6	57	83	42	54	39	156	674	700	64
Abroad	95	56	31	7	5	-	-	-	-	-	-	-	10	168	-
MEANS OF TRANSPORTATION AND PLACE OF WORK															
All workers	**2 622**	**925**	**2 359**	**142**	**529**	**24**	**164**	**46**	**128**	**98**	**120**	**537**	**1 651**	**1 965**	**550**
Private auto Driver	2 133	747	1 920	42	285	19	127	29	76	98	73	463	1 287	1 508	314
Passenger	338	128	312	100	174	6	24	-	21	-	29	42	258	273	184
Bus or streetcar	20	-	6	-	27	-	-	-	-	-	-	-	7	16	1
Subway, elevated train, or railroad	-	-	-	-	21	-	-	-	-	-	-	-	-	-	
Walked to work	28	25	21	-	12	9	13	-	15	-	13	21	34	92	1
Worked at home	27	-	41	-	-	-	-	-	7	-	-	7	11	22	
Other	76	25	59	-	10	-	-	17	9	-	5	4	54	54	1
Inside SMSA	2 400	856	2 193	120	423	34	158	46	118	92	111	474	1 535	1 769	527
Pensacola city	1 298	479	1 335	70	237	24	133	30	63	30	49	288	827	683	23
Remainder of Escambia County	981	303	805	42	186	10	25	16	55	54	54	173	632	1 001	27
Santa Rosa County	121	74	53	8	-	-	-	-	-	9	8	13	76	85	1
Outside SMSA	76	21	41	-	9	-	-	-	-	-	5	32	33	73	
Place of work not reported	146	48	125	22	97	-	6	-	10	6	4	31	83	123	2

[1]See text for definition. [2]Includes "Moved, 1965 residence not reported."

able P-2. Social Characteristics of the Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

ensus Tracts	Balance of Escambia County—Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
TIVITY, PARENTAGE, & COUNTRY OF ORIGIN															
All persons	**3 398**	**5 816**	**4 178**	**2 885**	**3 528**	**6 485**	**6 684**	**6 959**	**1 578**	**4 816**	**1 008**	**2 582**	**3 847**	**8 457**	**5 673**
tive of native parentage	3 376	4 916	4 106	2 775	3 406	6 088	5 573	6 125	1 473	4 257	920	2 467	3 535	7 954	5 308
tive of foreign or mixed parentage	3	81	65	87	92	298	624	632	57	327	88	101	222	418	266
reign born	19	19	7	23	30	99	487	202	48	232	–	14	90	85	99
Foreign stock	**22**	**100**	**72**	**110**	**122**	**397**	**1 111**	**834**	**105**	**559**	**88**	**115**	**312**	**503**	**365**
ited Kingdom	–	–	13	15	23	100	46	121	13	63	12	20	38	126	33
land (Eire)	–	–	13	16	7	6	–	34	–	14	–	–	13	–	7
eden	–	–	–	–	–	12	16	29	–	–	–	–	–	17	11
rmany	–	58	10	13	22	27	57	59	13	40	9	36	26	27	66
land	–	–	–	–	–	6	14	7	–	15	7	6	–	20	–
echoslovakia	–	–	–	5	13	5	23	6	–	–	–	–	–	7	–
stria	–	–	–	7	–	12	–	7	–	–	11	4	–	29	–
ngary	–	–	–	–	–	–	12	–	–	–	9	–	6	–	8
.S.R	–	–	–	–	–	–	18	31	–	6	8	–	–	8	15
y	–	34	18	7	–	41	94	109	12	17	8	7	23	38	7
nada	–	–	12	6	12	36	89	91	13	88	–	36	65	35	40
xico	–	–	–	10	–	–	6	7	7	12	–	–	7	5	6	
ba	–	–	–	–	–	7	–	48	–	–	–	–	–	–	–
er America	–	–	–	–	–	–	18	7	–	28	–	–	–	71	–
other and not reported	22	8	6	31	45	145	718	278	47	276	24	6	134	120	172
sons of Spanish language[1]	–	54	25	116	42	24	76	106	35	153	55	64	158	133	79
er persons of Spanish surname[1]	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
sons of Spanish mother tongue	–	46	25	84	17	8	53	51	35	87	49	22	50	55	32
sons of Puerto Rican birth or parentage	–	8	–	8	–	–	11	40	21	29	–	9	–	43	–

nsus Tracts

	Balance of Escambia County – Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
HOOL ENROLLMENT															
Enrolled persons, 3 to 34 years old	1 897	1 636	973	681	1 110	1 572	1 740	1 662	52	932	276	724	1 886	2 384	1 750
sery school	8	17	–	–	–	14	19	26	–	38	12	6	10	33	37
Public	8	7	–	–	–	9	14	–	–	–	–	–	–	5	–
dergarten	46	39	59	19	64	24	52	47	–	56	–	18	15	60	84
Public	28	24	10	6	6	13	37	8	–	–	–	12	8	–	20
mentary	695	1 137	592	390	704	901	1 096	933	–	496	139	402	760	1 311	972
Public	692	1 097	521	371	630	775	755	698	–	380	139	337	638	1 112	900
h school	331	404	271	183	271	464	413	414	13	157	53	250	252	638	455
Public	324	397	263	178	244	428	321	317	13	116	45	237	252	519	442
ege	17	39	51	89	71	169	160	242	39	185	72	48	49	342	202
cent enrolled in school by age															
16 and 17 years	90.6	75.5	76.0	93.7	98.0	82.7	82.4	88.8	...	75.6	...	99.9	82.3	99.9	90.7
18 and 19 years	37.5	50.3	36.8	43.8	38.9	43.7	44.8	57.0	5.0	5.6	...	65.4	22.3	24.2	70.4
20 and 21 years	11.1	–	10.9	16.5	11.4	13.8	12.4	12.5	2.1	2.4	21.7	9.1	7.2	12.4	21.0
22 to 24 years	–	6.1	6.2	7.7	11.1	15.6	8.1	9.6	3.7	6.2	14.4	9.2	7.9	6.0	13.2
25 to 34 years	1.8	4.4	2.7	11.2	5.8	5.4	3.2	8.9	3.0	9.9	15.9	3.9	3.1	11.7	6.0
cent 16 to 21 years not high school graduates nd not enrolled in school	22.9	29.1	31.2	23.5	26.4	15.9	20.8	11.1	22.8	14.0	–	11.2	28.9	9.0	9.0
ARS OF SCHOOL COMPLETED															
Persons, 25 years old and over	1 689	2 106	2 395	1 634	1 660	3 209	3 164	3 668	306	1 041	494	1 389	1 910	3 471	2 710
school years completed	117	52	44	6	65	9	46	31	–	–	–	–	39	25	18
mentary: 1 to 4 years	247	130	287	86	125	131	69	65	–	4	–	33	104	36	48
5 to 7 years	333	464	591	267	341	283	288	288	10	33	10	146	247	192	197
8 years	130	297	352	295	191	356	254	221	32	17	16	137	234	199	210
h school: 1 to 3 years	424	603	620	463	375	892	711	709	59	170	79	312	496	791	733
4 years	287	461	385	404	403	1 093	1 240	1 151	116	324	141	413	567	1 370	1 144
lege: 1 to 3 years	90	74	80	86	101	213	388	641	41	165	86	190	151	478	234
4 years or more	61	25	36	27	59	232	168	562	48	328	162	158	72	380	126
dian school years completed	9.1	9.5	8.8	10.1	9.9	11.8	12.2	12.5	12.4	12.9	13.0	12.2	11.0	12.4	12.1
cent high school graduates	25.9	26.6	20.9	31.6	33.9	47.9	56.8	64.2	67.0	78.5	78.7	54.8	41.4	64.2	55.5

nsus Tracts

	Balance of Escambia County — Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
ILDREN EVER BORN															
Women, 35 to 44 years old ever married	234	296	229	131	178	306	337	293	–	82	56	162	265	491	332
ldren ever born	1 058	1 092	723	374	684	850	1 018	886	–	355	110	470	872	1 497	1 129
er 1,000 women ever married	4 521	3 689	3 157	2 855	3 843	2 778	3 021	3 024	–	4 329	1 964	2 901	3 291	3 049	3 401
SIDENCE IN 1965															
Persons, 5 years old and over, 1970[1]	3 098	4 365	3 869	2 654	3 233	5 863	5 849	6 376	1 578	4 539	941	2 357	3 531	7 839	5 128
me house as in 1970	1 901	2 107	2 137	1 292	1 810	2 456	2 802	2 743	94	84	263	1 032	1 725	2 729	2 499
erent house:															
in central city of this SMSA	473	628	317	474	513	582	410	403	14	79	131	217	246	796	585
n other part of this SMSA	362	987	809	371	221	587	740	653	7	8	39	334	534	1 031	518
utside this SMSA	254	232	396	432	582	1 852	1 497	2 166	978	3 532	452	617	746	2 690	1 151
North and West	48	21	164	188	288	523	623	1 158	648	2 188	124	236	193	1 572	447
South	206	211	232	244	294	1 329	874	1 008	330	1 344	328	381	553	1 118	704
oad	7	25	38	7	5	69	217	159	20	433	–	95	44	245	234
EANS OF TRANSPORTATION AND PLACE OF WORK															
All workers	992	1 536	1 509	1 113	1 199	2 494	2 348	2 799	1 578	3 380	469	789	1 201	4 111	2 139
vate auto: Driver	550	1 028	1 048	859	968	1 895	1 875	2 339	1 009	2 936	356	699	815	3 110	1 793
Passenger	258	331	285	177	159	356	324	296	174	203	35	32	288	608	200
or streetcar	22	14	17	12	5	37	13	–	–	165	–	–	–	5	–
ay, elevated train, or railroad	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
ked to work	135	34	78	11	37	96	24	44	121	57	28	27	30	311	36
ked at home	6	32	37	6	–	31	30	65	–	8	21	31	28	21	21
er	21	97	44	47	30	79	82	55	274	11	29	–	40	56	89
ide SMSA	877	1 338	1 398	1 042	1 041	2 315	2 201	2 502	1 473	3 144	435	642	1 054	3 835	1 949
Pensacola city	417	597	552	410	443	928	751	807	–	10	212	373	377	777	684
Remainder of Escambia County	460	703	813	624	573	1 350	1 429	1 638	1 473	3 134	223	269	661	3 014	1 242
anta Rosa County	–	38	33	8	25	37	21	57	–	–	–	–	16	44	23
ide SMSA	5	55	53	31	43	62	74	64	86	–	27	84	35	81	76
e of work not reported	110	143	58	39	115	117	73	233	19	236	7	63	112	195	114

[1]See text for definition [2]Includes "Moved, 1965 residence not reported."

Table P-2. Social Characteristics of the Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Balance of Escambia County—Con											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
NATIVITY, PARENTAGE, & COUNTRY OF ORIGIN															
All persons	**6 559**	**4 859**	**7 385**	**7 822**	**4 284**	**10 097**	**9 129**	**4 304**	**2 879**	**3 680**	**4 335**	**2 137**	**3 456**	**1 163**	**4 331**
Native of native parentage	6 047	4 621	7 217	7 472	4 121	9 631	8 901	4 201	2 766	3 634	4 301	2 137	3 456	1 148	3 995
Native of foreign or mixed parentage	389	196	133	260	119	307	157	96	83	40	29	–	–	8	203
Foreign born	123	42	35	90	44	159	71	7	30	6	5	–	–	7	153
Foreign stock	**512**	**238**	**168**	**350**	**163**	**466**	**228**	**103**	**113**	**44**	**34**	**–**	**–**	**15**	**356**
United Kingdom	79	42	12	17	16	13	37	13	15	–	–	–	–	–	14
Ireland (Eire)	14	7	27	–	–	–	6	–	–	–	–	–	–	–	9
Sweden	8	7	6	36	–	43	14	–	–	–	–	–	–	–	–
Germany	32	82	11	79	18	47	35	6	–	40	–	–	–	8	6
Poland	21	7	–	–	5	16	–	–	–	–	7	–	–	–	–
Czechoslovakia	7	–	–	–	7	–	–	–	–	6	–	–	–	–	–
Austria	20	–	7	21	–	12	–	–	21	–	–	–	–	–	15
Hungary	–	–	–	7	21	13	–	–	34	–	7	–	–	–	–
U.S.S.R.	–	–	5	–	4	–	6	–	–	–	–	–	–	–	–
Italy	54	7	27	24	–	6	14	24	–	–	–	–	–	–	–
Canada	95	13	18	15	30	82	39	36	4	–	15	–	–	–	65
Mexico	14	–	8	58	–	7	–	–	–	–	–	–	–	–	6
Cuba	–	7	–	–	–	15	–	–	–	–	–	–	–	–	–
Other America	–	–	–	13	22	–	–	–	–	–	–	–	–	–	8
All other and not reported	168	66	47	80	40	212	77	24	39	–	5	–	–	7	233
Persons of Spanish language[1]	41	64	52	248	73	186	53	7	–	79	–	–	–	–	105
Other persons of Spanish surname[1]	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Persons of Spanish mother tongue	32	36	38	137	47	119	15	7	–	15	–	–	–	–	80
Persons of Puerto Rican birth or parentage	32	–	–	26	–	23	15	–	–	–	–	–	–	–	8

Census Tracts

	Balance of Escambia County — Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
SCHOOL ENROLLMENT															
Enrolled persons, 3 to 34 years old	**2 279**	**1 679**	**2 826**	**2 457**	**1 295**	**2 946**	**3 212**	**1 406**	**785**	**1 058**	**1 345**	**517**	**925**	**358**	**621**
Nursery school	18	21	-	28	7	23	-	-	-	16	-	-	8	-	5
Public	-	8	-	13	-	15	-	-	-	9	-	-	8	-	-
Kindergarten	113	91	99	124	41	166	126	49	18	23	13	28	79	39	28
Public	32	6	13	56	27	34	74	20	18	23	6	19	63	34	12
Elementary	1 313	1 111	1 875	1 589	801	1 810	1 680	960	554	712	941	311	585	230	421
Public	1 109	1 048	1 749	1 478	687	1 613	1 519	929	554	712	930	311	585	223	403
High school	601	248	666	531	325	606	803	331	196	295	374	171	211	71	134
Public	587	224	655	525	298	598	766	331	196	276	374	171	211	71	126
College	234	208	186	185	121	341	603	66	17	12	17	7	42	18	33
Percent enrolled in school by age															
16 and 17 years	92.7	92.8	83.6	86.2	98.5	87.7	90.3	84.9	91.9	69.7	67.1	88.1	99.9	99.9	62.0
18 and 19 years	65.5	66.0	69.1	36.8	57.4	30.1	56.5	43.2	20.4	70.3	46.0	39.6	67.9	...	11.3
20 and 21 years	34.8	26.1	32.0	10.2	28.5	9.5	63.9	5.0	12.4	13.5	7.4	-	-	...	1.7
22 to 24 years	7.1	5.0	12.0	6.7	13.7	14.1	21.4	6.8	10.3	2.2	-	-	6.5	-	2.3
25 to 34 years	11.3	13.8	6.5	7.5	3.9	7.6	11.7	7.1	1.9	-	4.5	2.4	2.6	-	2.1
Percent 16 to 21 years not high school graduates and not enrolled in school	13.8	11.2	11.6	20.6	15.0	14.4	11.6	28.3	17.9	13.5	33.8	26.2	11.9	7.2	14.1
YEARS OF SCHOOL COMPLETED															
Persons, 25 years old and over	**3 180**	**2 169**	**3 173**	**3 641**	**2 098**	**4 321**	**4 324**	**1 789**	**1 447**	**1 927**	**2 098**	**1 247**	**1 843**	**594**	**1 265**
No school years completed	15	18	88	42	18	86	52	75	39	34	68	36	39	23	4
Elementary 1 to 4 years	67	17	189	125	106	206	187	143	84	104	255	61	133	31	42
5 to 7 years	151	88	366	440	283	429	521	204	397	383	490	307	294	99	88
8 years	225	110	207	469	216	398	402	186	220	326	241	174	245	52	130
High school 1 to 3 years	664	401	762	821	485	902	1 123	381	291	495	491	263	386	113	266
4 years	1 367	1 073	1 117	1 298	766	1 478	1 444	591	345	498	458	330	632	226	387
College 1 to 3 years	446	317	329	279	144	407	289	126	38	47	35	43	68	28	125
4 years or more	245	145	115	167	80	415	306	83	33	40	60	33	46	22	223
Median school years completed	12.3	12.4	11.9	11.7	11.6	12.1	11.7	11.3	8.9	9.7	9.0	9.5	10.6	11.4	12.3
Percent high school graduates	64.7	70.8	49.2	47.9	47.2	53.2	47.2	44.7	28.7	30.4	26.4	32.6	40.5	46.5	58.1
CHILDREN EVER BORN															
Women, 35 to 44 years old ever married	**568**	**367**	**414**	**532**	**264**	**529**	**575**	**261**	**142**	**180**	**225**	**128**	**148**	**49**	**89**
Children ever born	1 805	968	1 377	1 725	882	1 643	1 854	1 117	485	677	755	347	427	195	246
Per 1 000 women ever married	3 178	2 638	3 326	3 242	3 341	3 106	3 224	4 280	3 415	3 761	3 356	2 711	2 885	3 980	2 764

Census Tracts

	Balance of Escambia County – Con											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
RESIDENCE IN 1965															
Persons, 5 years old and over, 1970[1]	**5 938**	**4 760**	**6 591**	**7 077**	**3 842**	**9 156**	**8 397**	**3 779**	**2 604**	**3 358**	**3 960**	**1 944**	**3 217**	**1 044**	**3 917**
Same house as in 1970	2 548	1 538	3 338	3 026	1 895	3 328	3 490	2 156	1 743	1 964	2 501	1 183	1 798	437	480
Different house															
In central city of this SMSA	527	395	1 002	813	263	764	1 052	243	46	118	51	65	85	54	5
In other part of this SMSA	846	519	696	1 478	663	1 308	1 697	955	386	795	1 020	525	912	440	214
Outside this SMSA	1 591	1 493	1 104	1 459	680	2 596	1 308	289	112	324	247	102	361	82	2 716
North and West	495	490	304	575	202	1 160	142	104	48	-	32	6	130	20	1 772
South	1 096	1 003	800	884	478	1 436	1 166	185	64	324	215	96	231	62	944
Abroad	266	109	222	158	67	301	68	25	-	15	-	6	-	-	285
MEANS OF TRANSPORTATION AND PLACE OF WORK															
All workers	**2 495**	**1 742**	**2 290**	**2 712**	**1 457**	**4 326**	**3 091**	**1 241**	**969**	**1 212**	**1 146**	**695**	**1 258**	**298**	**2 554**
Private auto Driver	2 168	1 427	1 770	2 324	1 154	2 691	2 400	957	498	826	667	386	724	178	1 492
Passenger	229	237	378	236	204	420	425	211	230	172	299	163	223	107	657
Bus or streetcar	6	-	6	7	7	-	-	-	49	27	19	25	57	-	-
Subway, elevated train, or railroad	-	-	-	-	-	27	-	-	-	-	-	-	-	-	-
Walked to work	34	15	7	44	72	1 081	139	47	32	106	77	20	51	6	279
Worked at home	18	17	16	19	-	76	95	13	110	54	15	35	71	-	48
Other	40	46	113	82	20	31	32	13	50	27	69	66	132	7	78
Inside SMSA	2 380	1 569	2 096	2 517	1 345	3 984	2 866	1 131	547	867	765	572	1 009	286	1 981
Pensacola city	924	589	1 020	960	400	1 231	789	434	115	250	101	26	45	40	47
Remainder of Escambia County	1 435	973	1 047	1 557	921	2 723	1 983	684	432	603	637	124	245	124	45
Santa Rosa County	21	7	29	-	24	30	94	13	-	14	27	422	719	122	1 889
Outside SMSA	81	26	51	70	39	85	77	42	305	266	346	116	147	-	6
Place of work not reported	34	147	143	125	73	257	148	68	117	79	35	7	102	12	567

[1] See text for definition. [2] Includes "Moved, 1965 residence not reported."

Table P-2. Social Characteristics of the Population: 1970—Continued

(Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Census Tracts	Santa Rosa County—Con.					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
NATIVITY, PARENTAGE, & COUNTRY OF ORIGIN															
All persons	3 861	6 613	7 813	5 257	4 190	5 910	8 271	6 284	6 893	3 861	3 490	4 844	3 871	6 799	10 231
Native of native parentage	3 453	6 359	6 877	5 078	3 902	5 853	7 783	5 990	6 177	3 548	3 468	4 409	2 961	6 397	9 865
Native of foreign or mixed parentage	89	172	109	162	265	42	351	222	324	13	3	106	87	303	307
Foreign born	19	82	27	17	23	15	137	74	92	-	19	29	23	99	159
Foreign stock	108	254	136	179	288	57	488	296	416	13	22	135	110	402	466
United Kingdom	43	-	23	23	59	-	55	38	64	-	-	13	15	100	13
Ireland (Eire)	8	16	13	-	-	-	7	9	24	-	-	13	16	6	-
Sweden	5	8	14	5	-	6	19	-	5	-	-	-	-	12	43
Germany	19	89	43	39	34	-	112	38	64	-	-	17	13	27	47
Poland	4	7	7	7	40	-	42	14	-	-	-	-	-	6	16
Czechoslovakia	-	-	-	-	-	-	-	6	-	-	-	-	5	5	-
Austria	-	7	-	9	-	17	-	-	-	-	-	-	7	12	12
Hungary	-	-	7	-	-	-	6	13	-	-	-	7	-	-	13
U.S.S.R.	-	-	-	-	8	7	5	29	-	-	-	-	-	-	-
Italy	-	8	-	25	19	-	19	35	35	-	-	18	7	41	6
Canada	7	8	7	65	72	-	69	36	35	-	-	12	6	36	82
Mexico	-	-	-	6	-	-	-	-	5	-	-	8	10	-	2
Cuba	-	-	-	-	-	-	-	-	-	-	-	9	-	7	15
Other America	6	-	7	-	-	20	17	12	45	6	-	-	-	-	-
All other and not reported	16	111	15	-	56	7	137	66	139	7	22	38	31	150	212
Persons of Spanish language[1]	-	45	34	115	-	70	140	108	108	12	-	79	116	133	186
Other persons of Spanish surname[1]	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Persons of Spanish mother tongue	-	39	21	23	-	31	66	46	57	6	-	70	84	41	119
Persons of Puerto Rican birth or parentage	-	48	-	-	-	-	6	8	6	-	-	-	8	-	23

Census Tracts	Santa Rosa County – Con					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
SCHOOL ENROLLMENT															
Enrolled persons, 3 to 34 years old	1 181	2 165	2 149	1 607	1 527	1 895	2 845	1 986	2 220	1 203	1 128	1 839	747	1 679	3 845
Nursery school	–	18	–	7	8	5	70	34	7	–	8	–	–	14	23
Public	–	–	–	–	8	5	–	–	7	–	8	–	–	9	15
Kindergarten	46	187	84	88	78	98	204	64	54	23	46	59	19	32	173
Public	31	123	70	58	50	39	15	12	7	23	28	10	6	21	34
Elementary	756	1 336	1 299	1 014	928	1 227	1 641	804	1 520	755	707	622	420	973	1 837
Public	727	1 259	1 261	1 014	775	1 150	1 492	677	1 222	696	704	521	383	816	1 634
High school	271	442	568	396	370	498	565	621	454	372	350	307	213	482	658
Public	256	425	555	396	315	492	533	560	412	336	343	269	208	428	635
College	108	182	198	102	143	67	385	463	185	53	17	51	95	178	354
Percent enrolled in school by age															
16 and 17 years	99.9	96.4	90.0	68.5	99.9	82.6	88.8	83.1	73.8	88.0	90.6	80.4	93.4	84.6	88.7
18 and 19 years	39.8	57.8	41.5	56.0	80.9	27.1	73.4	85.3	37.4	64.6	40.7	35.0	43.8	46.0	32.1
20 and 21 years	17.9	14.2	13.2	10.6	38.5	11.4	41.4	56.0	21.5	20.5	11.1	10.9	14.0	13.8	10.4
22 to 24 years	13.3	10.0	11.2	11.0	5.0	5.6	16.6	11.7	14.1	14.4	–	5.7	10.5	15.5	14.7
25 to 34 years	12.8	7.5	6.9	3.7	6.5	3.8	10.0	9.3	8.3	1.5	1.8	2.5	11.2	5.1	7.4
Percent 16 to 21 years not high school graduates and not enrolled in school	13.5	9.1	18.5	19.6	7.2	30.9	9.6	4.8	18.4	25.2	23.5	29.4	26.2	15.6	14.0
YEARS OF SCHOOL COMPLETED															
Persons, 25 years old and over	1 575	3 044	3 368	2 657	2 172	2 736	4 109	3 148	3 816	1 712	1 733	2 614	1 718	3 367	4 421
No school years completed	11	17	61	25	–	98	30	28	42	63	135	44	6	9	86
Elementary: 1 to 4 years	86	129	225	105	23	365	64	56	116	337	254	287	90	144	206
5 to 7 years	127	234	477	344	47	459	153	230	388	332	339	601	286	321	429
8 years	115	207	360	231	70	293	137	333	293	213	134	386	313	360	398
High school: 1 to 3 years	264	544	800	566	170	656	511	590	651	322	433	644	479	923	902
4 years	649	1 169	991	893	756	610	1 535	1 053	961	348	287	471	431	1 144	1 533
College: 1 to 3 years	186	386	316	278	531	168	715	383	243	59	90	97	86	234	431
4 years or more	137	358	138	215	575	87	964	475	322	38	61	84	27	232	436
Median school years completed	12.3	12.3	11.1	12.1	13.1	9.7	12.8	12.3	12.0	8.6	9.0	9.0	10.0	11.8	12.1
Percent high school graduates	61.7	62.8	47.9	52.2	85.7	31.6	78.2	60.7	50.6	26.0	25.3	24.9	31.7	47.8	54.3

Census Tracts	Santa Rosa County – Con					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
HILDREN EVER BORN															
Women, 35 to 44 years old ever married	217	385	387	340	397	291	542	447	448	205	249	241	137	317	540
ildren ever born	712	1 222	1 273	1 024	1 075	1 213	1 337	1 181	1 453	762	1 102	761	404	877	1 661
Per 1,000 women ever married	3 281	3 174	3 289	3 012	2 708	4 168	2 467	2 642	3 243	3 717	4 426	3 158	2 949	2 767	3 076
SIDENCE IN 1965															
Persons, 5 years old and over, 1970[1]	3 185	5 983	6 417	4 809	3 894	5 356	7 356	5 844	5 927	3 271	3 190	4 212	2 832	6 135	9 375
me house as in 1970	1 084	2 637	2 998	2 200	1 403	3 154	2 459	2 200	2 647	2 351	1 922	2 311	1 343	2 623	3 433
ferent house:															
In central city of this SMSA	109	124	119	299	474	1 348	1 420	898	916	484	532	378	499	592	772
In other part of this SMSA	795	1 126	1 686	938	461	77	499	523	757	180	362	829	371	587	1 330
Outside this SMSA	1 014	1 756	1 334	1 033	1 256	388	2 421	1 800	1 069	163	260	460	522	1 922	2 680
North and West	393	580	432	272	450	47	938	613	331	35	48	171	195	551	1 190
South	621	1 176	902	761	806	341	1 483	1 187	738	128	212	289	327	1 371	1 490
road	85	101	41	9	37	38	95	66	175	5	7	38	7	69	301
ANS OF TRANSPORTATION AND PLACE OF WORK															
All workers	1 304	2 475	2 428	1 821	1 619	1 885	3 159	2 576	2 107	1 079	1 026	1 673	1 158	2 622	4 434
vate auto: Driver	950	1 809	1 428	1 275	1 363	813	2 596	2 034	1 550	599	569	1 175	888	1 971	2 789
Passenger	242	368	499	311	91	674	380	386	373	358	264	309	177	377	420
or streetcar	5	14	5	36	–	92	20	7	16	43	22	17	12	37	–
way, elevated train, or railroad	–	–	–	–	–	–	–	–	–	21	–	–	–	–	27
ked to work	26	191	162	59	28	248	49	59	92	29	144	91	11	111	1 081
rked at home	8	40	43	50	–	–	34	11	22	–	6	37	6	38	76
her	73	53	291	90	137	58	80	79	54	29	21	44	64	88	31
de SMSA	1 214	2 284	2 207	1 433	1 450	1 639	2 874	2 391	1 889	952	911	1 556	1 088	2 433	4 076
Pensacola city	92	193	307	248	652	1 020	1 586	1 306	753	475	441	685	440	991	1 261
Remainder of Escambia County	104	187	494	265	550	578	1 154	935	1 043	459	470	838	640	1 405	2 777
Santa Rosa County	1 018	1 904	1 406	920	248	41	134	150	93	18	–	33	8	37	38
side SMSA	35	96	110	263	55	83	108	54	73	9	5	53	31	62	85
ce of work not reported	55	95	111	125	114	163	177	131	145	118	110	64	39	127	263

[1]See text for definition. [2]Includes "Moved, 1965 residence not reported."

Table P-3. Labor Force Characteristics of the Population: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
EMPLOYMENT STATUS															
Male, 16 years old and over	**81 492**	**68 664**	**18 453**	**50 211**	**12 828**	**130**	**1 237**	**1 543**	**1 426**	**699**	**1 484**	**902**	**1 869**	**1 164**	**2 388**
Labor force	64 992	54 487	13 536	40 951	10 505	57	769	1 172	939	478	955	625	1 264	883	1 852
Percent of total	79.8	79.4	73.4	81.6	81.9	43.8	62.2	76.0	65.8	68.4	64.4	69.3	67.6	75.9	80.2
Civilian labor force	48 456	41 039	12 446	28 593	7 417	57	721	1 048	927	467	943	606	1 202	841	1 591
Employed	46 648	39 422	11 933	27 489	7 226	57	690	1 005	844	457	888	547	1 139	805	1 571
Unemployed	1 808	1 617	513	1 104	191	–	31	43	83	10	55	59	63	36	20
Percent of civilian labor force	3.7	3.9	4.1	3.9	2.6	–	4.3	4.1	9.0	2.1	5.8	9.7	5.2	4.3	1.3
Not in labor force	16 500	14 177	4 917	9 260	2 323	73	468	371	487	221	529	277	605	281	456
Inmate of institution	332	332	70	262	–	45	–	–	–	–	–	–	–	–	–
Enrolled in school	5 540	4 802	1 624	3 178	738	5	51	66	126	72	154	29	171	84	240
Other under 65 years	5 666	4 844	1 574	3 270	822	–	216	130	251	77	236	113	142	48	98
Other 65 years and over	4 962	4 199	1 649	2 550	763	23	201	175	110	77	139	135	292	149	118
Male, 16 to 21 years old	**16 868**	**14 261**	**2 998**	**11 263**	**2 607**	**5**	**167**	**191**	**326**	**94**	**257**	**162**	**317**	**153**	**342**
Not enrolled in school	9 311	7 811	971	6 840	1 500	–	93	116	163	28	88	114	79	42	46
Not high school graduates	2 688	2 316	469	1 847	372	–	56	56	128	8	49	70	12	–	14
Unemployed or not in labor force	848	772	214	558	76	–	34	3	63	8	17	46	6	–	–
Female, 16 years old and over	**83 039**	**70 593**	**22 894**	**47 699**	**12 446**	**98**	**1 580**	**1 866**	**1 988**	**959**	**1 893**	**1 199**	**2 565**	**1 540**	**2 533**
Labor force	31 298	26 864	9 536	17 328	4 434	35	729	778	1 016	364	863	526	1 016	664	876
Percent of total	37.7	38.1	41.7	36.3	35.6	35.7	46.1	41.7	51.1	38.0	45.6	43.9	39.6	43.1	34.6
Civilian labor force	30 848	26 522	9 516	17 006	4 326	35	729	778	1 016	364	857	526	1 016	664	872
Employed	28 671	24 607	8 877	15 730	4 064	24	657	715	898	345	792	474	963	635	854
Unemployed	2 177	1 915	639	1 276	262	11	72	63	118	19	65	52	53	29	18
Percent of civilian labor force	7.1	7.2	6.7	7.5	6.1	31.4	9.9	8.1	11.6	5.2	7.6	9.9	5.2	4.4	2.1
Not in labor force	51 741	43 729	13 358	30 371	8 012	63	851	1 088	972	595	1 030	673	1 549	876	1 657
Married women, husband present	51 705	43 214	11 958	31 256	8 491	25	621	1 079	746	411	670	429	1 212	837	1 730
In labor force	18 156	15 233	4 705	10 528	2 923	12	299	425	371	154	303	178	488	322	583
With own children under 6 years	15 126	12 468	2 985	9 483	2 658	11	89	268	253	89	123	126	199	142	384
In labor force	3 945	3 283	956	2 327	662	3	48	116	144	40	68	34	75	41	87

Census Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
OCCUPATION															
Total employed, 16 years old and over	**75 319**	**64 029**	**20 810**	**43 219**	**11 290**	**81**	**1 347**	**1 720**	**1 742**	**802**	**1 680**	**1 021**	**2 102**	**1 448**	**2 425**
Professional, technical, and kindred workers	11 341	9 487	3 986	5 501	1 854	20	138	162	90	193	69	81	422	477	787
Health workers	1 680	1 473	668	805	207	–	18	43	17	32	10	32	45	75	130
Teachers, elementary and secondary schools	2 908	2 439	1 033	1 406	469	13	52	36	54	63	35	6	149	128	148
Managers and administrators, except farm	6 014	4 971	1 856	3 115	1 043	11	91	105	37	127	26	12	175	218	344
Salaried	4 745	3 976	1 548	2 428	769	11	88	73	10	96	26	7	145	180	285
Self-employed in retail trade	671	503	168	335	168	–	3	16	10	11	–	5	19	17	47
Sales workers	5 937	5 285	1 814	3 471	652	4	100	188	12	67	46	79	215	169	305
Retail trade	3 682	3 347	1 027	2 320	335	4	93	122	5	29	11	69	123	69	144
Clerical and kindred workers	12 807	11 083	3 482	7 601	1 724	4	195	396	143	107	89	74	428	266	459
Craftsmen, foremen, and kindred workers	12 694	10 891	2 448	8 443	1 803	14	144	339	201	103	198	115	226	115	207
Construction craftsmen	3 889	3 246	699	2 547	643	-	80	117	103	41	61	33	86	–	25
Mechanics and repairmen	3 803	3 247	570	2 677	556	3	36	70	35	11	28	24	45	29	44
Operatives, except transport	8 566	6 908	1 357	5 551	1 658	5	151	111	187	40	222	78	142	–	63
Transport equipment operatives	2 851	2 437	749	1 688	414	5	84	44	118	24	85	93	70	11	59
Laborers, except farm	3 910	3 322	1 167	2 155	588	11	88	106	157	12	187	169	121	32	62
Farm workers	954	549	130	419	405	–	6	–	68	–	6	–	24	20	–
Service workers[1]	7 861	6 949	2 602	4 347	912	–	207	228	389	81	448	202	234	127	128
Cleaning and food service workers	4 263	3 848	1 418	2 430	415	–	134	116	263	51	336	131	117	26	16
Protective service workers	871	741	304	437	130	–	20	40	–	–	–	18	16	37	65
Personal and health service workers	2 098	1 821	634	1 187	277	–	43	47	106	30	49	22	63	33	40
Private household workers	2 384	2 147	1 219	928	237	7	143	41	340	48	304	118	45	5	11
Female employed, 16 years old and over	**28 671**	**24 607**	**8 877**	**15 730**	**4 064**	**24**	**657**	**715**	**898**	**345**	**792**	**474**	**963**	**635**	**854**
Professional, technical, and kindred workers	5 026	4 306	1 844	2 462	720	8	87	86	68	108	52	57	244	208	283
Teachers, elementary and secondary schools	2 290	1 958	851	1 107	332	8	42	30	51	54	29	6	107	112	127
Managers and administrators, except farm	1 078	894	337	557	184	–	25	22	11	15	16	5	38	58	46
Sales workers	2 398	2 173	704	1 469	225	4	59	81	9	16	21	40	104	56	100
Clerical and kindred workers	9 288	7 976	2 518	5 458	1 312	–	139	311	75	77	60	46	306	223	321
Secretaries, stenographers, and typists	3 456	2 975	1 010	1 965	481	–	63	118	27	18	21	18	104	116	118
Operatives, including transport	2 983	2 311	570	1 741	672	5	92	34	97	38	50	50	60	–	35
Other blue-collar workers	712	605	209	396	107	–	–	29	32	–	22	20	22	26	15
Farm workers	114	84	35	49	30	–	–	–	–	–	6	–	19	10	–
Service workers, except private household	4 743	4 163	1 454	2 709	580	–	116	111	270	48	261	138	125	49	43
Private household workers	2 329	2 095	1 206	889	234	7	139	41	336	43	304	118	45	5	11

Census Tracts

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
INDUSTRY															
Total employed, 16 years old and over	**75 319**	**64 029**	**20 810**	**43 219**	**11 290**	**81**	**1 347**	**1 720**	**1 742**	**802**	**1 680**	**1 021**	**2 102**	**1 440**	**2 425**
Construction	6 395	5 294	1 440	3 854	1 101	11	130	157	160	42	174	77	169	27	118
Manufacturing	13 626	10 937	2 417	8 520	2 689	5	81	198	113	69	166	121	183	145	393
Durable goods	3 119	2 774	689	2 085	345	5	27	90	38	15	67	66	49	55	74
Transportation	2 505	2 232	707	1 525	273	–	68	58	70	11	36	111	35	29	73
Communications, utilities, and sanitary services	2 448	2 130	684	1 446	318	–	45	57	34	62	18	29	93	39	55
Wholesale trade	2 477	2 226	759	1 467	251	–	28	39	33	38	28	32	148	64	82
Retail trade	13 397	11 688	3 568	8 120	1 709	23	255	401	256	98	205	217	374	226	426
Finance, insurance, and real estate	2 900	2 493	1 030	1 463	407	–	50	58	28	37	51	10	148	122	187
Business and repair services	2 148	1 942	594	1 348	206	–	31	52	35	18	50	34	33	45	99
Personal services	5 279	4 695	2 241	2 454	584	18	256	105	470	114	456	218	83	68	63
Health services	3 788	3 297	1 415	1 882	491	–	72	66	121	67	114	62	130	145	155
Educational services	6 602	5 517	2 234	3 283	1 085	13	127	100	141	118	126	19	267	213	346
Other professional and related services	2 515	2 173	947	1 226	342	7	53	76	11	35	83	40	123	91	138
Public administration	9 054	7 830	2 277	5 553	1 224	4	106	299	158	70	157	36	284	166	260
Other industries	2 185	1 575	497	1 078	610	–	43	54	110	23	16	15	32	60	30
CLASS OF WORKER															
Total employed, 16 years old and over	**75 319**	**64 029**	**20 810**	**43 219**	**11 290**	**81**	**1 347**	**1 720**	**1 742**	**802**	**1 680**	**1 021**	**2 102**	**1 440**	**2 425**
Private wage and salary workers	51 527	44 144	14 154	29 990	7 383	66	988	1 128	1 271	495	1 209	845	1 374	801	1 547
Government workers	18 411	15 474	5 219	10 255	2 937	9	268	475	365	204	421	114	603	427	620
Local government workers	6 758	5 558	2 439	3 119	1 200	5	151	225	167	96	215	42	269	212	276
Self-employed workers	5 002	4 101	1 381	2 720	901	6	86	117	102	103	50	62	125	207	239
Unpaid family workers	379	310	56	[1]254	69	–	5	–	4	–	–	–	–	5	19

[1]Includes allocated cases, not shown separately

Table P-3. Labor Force Characteristics of the Population: 1970—Continued

[Data based on sample, see text For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Pensacola—Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
EMPLOYMENT STATUS															
Male, 16 years old and over	2 080	820	1 839	96	501	29	108	45	88	85	128	391	1 345	1 755	511
Labor force	1 829	581	1 401	70	376	29	82	28	82	64	85	350	1 138	1 382	335
Percent of total	87.9	70.9	76.2	72.9	75.0	100.0	75.9	62.2	93.2	75.3	66.4	89.5	84.6	78.7	65.6
Civilian labor force	1 622	456	1 277	67	358	29	76	22	72	64	73	315	964	1 189	331
Employed	1 603	440	1 254	58	312	29	76	22	72	64	69	315	942	1 146	293
Unemployed	19	16	23	9	46	–	–	–	–	–	4	–	22	43	38
Percent of civilian labor force	1.2	3.5	1.8	13.4	12.8	–	–	–	–	–	5.5	–	2.3	3.6	11.5
Not in labor force	251	239	438	26	125	–	26	17	6	21	43	41	207	373	176
Inmate of institution	–	14	11	–	–	–	–	–	–	–	9	–	–	–	–
Enrolled in school	168	147	247	6	14	–	11	6	6	21	4	15	78	157	29
Other under 65 years	65	30	93	9	61	–	5	5	–	–	20	18	79	100	118
Other 65 years and over	18	48	87	11	50	–	10	6	–	–	10	8	50	116	29
Male, 16 to 21 years old	318	199	316	25	60	6	11	12	12	26	40	30	233	252	119
Not enrolled in school	61	30	48	14	43	–	–	6	–	–	31	21	39	63	59
Not high school graduates	19	9	10	–	38	–	–	–	–	–	15	13	24	15	30
Unemployed or not in labor force	7	–	10	–	20	–	–	–	–	–	15	–	21	6	24
Female, 16 years old and over	2 227	1 048	2 135	279	562	27	157	73	89	76	172	504	1 423	2 006	627
Labor force	825	356	939	135	240	17	63	27	40	27	38	213	548	814	276
Percent of total	37.0	34.0	44.0	48.4	42.7	63.0	40.1	37.0	44.9	35.5	22.1	42.3	38.5	40.6	44.0
Civilian labor force	825	356	934	135	235	17	63	27	40	27	38	213	548	814	276
Employed	804	346	904	89	214	6	63	27	40	27	32	203	526	713	235
Unemployed	21	10	30	46	21	11	–	–	–	–	6	10	22	101	41
Percent of civilian labor force	2.5	2.8	3.2	34.1	8.9	...	–	–	–	–	15.8	4.7	4.0	12.4	14.9
Not in labor force	1 402	692	1 196	144	322	10	94	46	49	49	134	291	875	1 192	351
Married women, husband present	1 701	543	1 366	85	244	15	82	30	70	62	40	328	918	1 388	305
In labor force	617	194	519	47	103	5	33	4	21	27	10	128	312	509	139
With own children under 6 years	662	121	377	28	62	–	5	6	24	16	–	117	222	437	96
In labor force	135	30	93	15	16	–	–	–	11	–	–	54	65	153	54

Census Tracts	Pensacola — Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tr 00
OCCUPATION															
Total employed, 16 years old and over	**2 487**	**786**	**2 158**	**147**	**526**	**35**	**139**	**49**	**112**	**91**	**101**	**518**	**1 468**	**1 859**	
Professional, technical, and kindred workers	767	207	431	10	44	–	39	–	19	30	6	108	311	310	
Health workers	98	41	94	–	6	–	16	–	–	11	–	17	52	41	
Teachers, elementary and secondary schools	137	65	109	–	10	–	23	–	–	5	–	22	54	132	
Managers and administrators, except farm	300	59	297	–	11	–	25	5	13	–	5	29	108	126	
Salaried	291	59	242	–	–	–	25	5	5	–	–	17	83	126	
Self-employed in retail trade	4	–	23	–	5	–	–	–	8	–	5	6	10	–	
Sales workers	212	115	228	–	5	–	31	–	16	22	15	44	182	179	
Retail trade	103	68	145	–	5	–	21	–	16	–	15	16	112	96	
Clerical and kindred workers	465	211	542	9	45	–	12	16	5	16	19	68	250	338	
Craftsmen, foremen, and kindred workers	310	85	285	9	43	–	10	12	27	5	5	140	224	324	
Construction craftsmen	55	17	60	4	5	–	–	–	12	–	–	52	70	78	
Mechanics and repairmen	115	25	77	5	19	–	–	–	4	–	–	46	77	84	
Operatives, except transport	127	31	91	22	72	–	5	–	10	–	13	44	129	249	
Transport equipment operatives	35	24	38	–	34	13	–	–	4	8	8	–	28	72	
Laborers, except farm	45	–	71	9	71	16	–	–	5	5	16	18	46	59	
Farm workers	–	6	–	–	–	–	–	–	–	–	–	–	15	4	
Service workers[1]	135	48	125	60	145	–	11	16	13	5	14	63	175	170	
Cleaning and food service workers	47	9	34	44	82	–	–	6	6	–	14	28	69	83	
Protective service workers	52	14	22	5	5	–	–	5	–	5	–	12	24	36	
Personal and health service workers	36	25	62	11	44	–	11	5	7	–	–	23	82	38	
Private household workers	11	–	50	28	56	6	6	–	–	–	–	4	–	28	
Female employed, 16 years old and over	**804**	**346**	**904**	**89**	**214**	**6**	**63**	**27**	**40**	**27**	**32**	**203**	**526**	**713**	
Professional, technical, and kindred workers	259	116	177	5	33	–	33	–	4	16	–	64	129	154	
Teachers, elementary and secondary schools	110	56	87	–	10	–	17	–	–	5	–	22	54	100	
Managers and administrators, except farm	33	19	36	–	–	–	–	–	13	–	5	5	13	16	
Sales workers	57	41	105	–	–	–	6	–	5	–	–	16	65	77	
Clerical and kindred workers	363	133	404	–	21	–	7	16	5	11	9	52	179	254	
Secretaries, stenographers, and typists	194	44	146	–	–	–	7	–	5	11	–	26	72	98	
Operatives, including transport	34	13	23	14	25	–	–	–	–	–	4	9	28	85	
Other blue-collar workers	4	5	23	–	11	–	–	–	–	–	–	–	15	8	
Farm workers	–	–	–	–	–	–	–	–	–	–	–	–	–	4	
Service workers, except private household	43	19	86	42	68	–	11	11	13	–	14	53	97	92	
Private household workers	11	–	50	28	56	6	6	–	–	–	–	4	–	23	

Census Tracts	Pensacola – Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
INDUSTRY															
Total employed, 16 years old and over	**2 407**	**786**	**2 158**	**147**	**526**	**35**	**139**	**49**	**112**	**91**	**101**	**518**	**1 468**	**1 859**	**528**
Construction	90	33	187	5	45	–	–	–	5	10	19	71	104	175	37
Manufacturing	425	127	279	4	67	–	5	11	6	19	6	85	215	482	86
Durable goods	94	15	49	–	35	–	–	5	–	5	–	17	71	96	20
Transportation	70	34	87	–	14	6	–	–	–	5	5	16	39	36	11
Communications, utilities, and sanitary services	95	25	113	4	10	–	5	–	–	–	–	10	90	35	18
Wholesale trade	64	28	130	5	35	–	5	–	–	–	9	25	39	51	11
Retail trade	394	139	387	17	43	7	37	22	39	–	42	79	314	293	81
Finance, insurance, and real estate	149	61	101	–	5	–	5	–	–	18	–	16	70	56	3
Business and repair services	102	21	46	–	14	–	5	–	9	–	–	24	49	51	5
Personal services	63	21	95	56	109	10	17	–	12	5	9	23	106	83	140
Health services	149	77	144	20	56	–	27	5	–	5	–	31	78	60	25
Educational services	356	85	231	9	38	6	23	–	5	11	–	60	132	230	49
Other professional and related services	111	36	95	5	24	–	5	–	14	–	6	4	71	49	5
Public administration	291	93	245	22	35	–	5	11	22	13	–	58	125	233	52
Other industries	48	6	18	–	31	6	–	–	–	5	5	16	36	25	5
CLASS OF WORKER															
Total employed, 16 years old and over	**2 407**	**786**	**2 158**	**147**	**526**	**35**	**139**	**49**	**112**	**91**	**101**	**518**	**1 468**	**1 859**	**528**
Private wage and salary workers	1 640	564	1 462	96	358	17	114	38	73	68	76	344	1 057	1 386	358
Government workers	700	190	525	51	148	18	21	11	26	23	5	129	314	423	153
Local government workers	285	82	253	33	92	6	16	–	4	10	–	62	129	130	74
Self-employed workers	58	32	157	–	20	–	4	–	13	–	20	45	97	46	17
Unpaid family workers	9	–	14	–	–	–	–	–	–	–	–	–	–	4	–

[1]Includes allocated cases, not shown separately.

Table P-3. Labor Force Characteristics of the Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Balance of Escambia County—Con.													
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
EMPLOYMENT STATUS															
Male, 16 years old and over	1 022	1 339	1 429	968	1 113	2 212	2 045	2 401	1 573	3 197	437	862	1 227	3 734	1 783
Labor force	643	1 012	1 006	709	843	1 812	1 662	1 946	1 572	3 168	373	617	960	3 326	1 486
Percent of total	62.9	75.6	70.4	73.2	75.7	81.9	81.3	81.0	100.0	99.1	87.4	71.6	78.2	89.3	83.3
Civilian labor force	625	991	982	676	726	1 366	1 104	1 413	–	40	295	471	770	1 349	1 177
Employed	586	933	939	676	690	1 298	1 079	1 389	–	40	285	458	730	1 309	1 122
Unemployed	39	58	43	–	36	68	25	24	–	–	10	13	40	40	55
Percent of civilian labor force	6.2	5.9	4.4	–	5.0	5.0	2.3	1.7	–	–	3.4	2.8	5.2	3.0	4.7
Not in labor force	379	327	423	259	270	400	383	455	–	29	64	245	267	398	297
Inmate of institution	123	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Enrolled in school	68	70	90	55	90	87	191	169	–	25	12	52	60	170	115
Other under 65 years	115	173	181	104	103	175	73	142	–	4	31	110	107	139	91
Other 65 years and over	73	84	152	100	77	138	119	144	–	–	11	83	100	89	91
Male, 16 to 21 years old	183	223	218	126	190	296	411	385	914	1 237	59	101	198	1 564	336
Not enrolled in school	89	127	75	67	86	155	200	163	888	1 176	30	39	133	1 278	123
Not high school graduates	59	75	57	37	32	32	80	28	210	196	–	21	72	146	27
Unemployed or not in labor force	36	40	27	15	14	13	19	9	–	–	–	21	14	12	6
Female, 16 years old and over	1 119	1 537	1 690	1 164	1 248	2 385	2 396	2 783	–	679	373	961	1 356	2 381	1 914
Labor force	461	589	648	429	501	873	818	1 026	–	240	176	266	346	836	754
Percent of total	41.2	38.3	38.3	36.9	40.1	36.6	34.1	36.9	–	35.3	47.2	27.7	25.5	35.1	39.4
Civilian labor force	461	584	648	429	484	873	813	1 001	–	43	176	249	346	817	748
Employed	438	536	580	392	422	777	754	924	–	37	166	229	300	775	713
Unemployed	23	48	68	37	62	96	59	77	–	6	10	20	46	42	35
Percent of civilian labor force	5.0	8.2	10.5	8.6	12.8	11.0	7.3	7.7	–	14.0	5.7	8.0	13.3	5.1	4.7
Not in labor force	658	948	1 042	735	747	1 512	1 578	1 757	–	439	197	695	1 010	1 545	1 160
Married women, husband present	450	878	923	681	743	1 658	1 538	1 861	–	398	206	644	907	1 656	1 296
In labor force	259	283	291	247	283	537	462	536	–	43	76	145	223	540	443
With own children under 6 years	140	293	196	146	233	461	595	412	–	220	40	143	217	473	448
In labor force	85	72	54	40	79	79	158	47	–	9	5	14	43	86	88

Census Tracts

	Balance of Escambia County—Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
OCCUPATION															
Total employed 16 years old and over	1 024	1 469	1 519	1 068	1 112	2 075	1 833	2 313	-	77	451	687	1 030	2 084	1 835
Professional, technical, and kindred workers	55	38	109	67	84	225	217	617	-	6	236	91	97	395	195
Health workers	6	-	6	15	37	43	75	111	-	-	17	8	11	50	35
Teachers, elementary and secondary schools	22	23	11	10	31	68	31	146	-	6	57	15	26	157	42
Managers and administrators, except farm	27	81	79	61	55	170	136	253	-	10	91	74	54	193	224
Salaried	23	70	66	61	29	122	106	192	-	-	69	55	38	152	155
Self-employed in retail trade	4	-	13	-	16	31	15	28	-	10	5	19	5	18	32
Sales workers	6	76	158	151	100	181	170	250	-	-	35	71	45	197	112
Retail trade	6	59	133	114	63	111	116	149	-	-	29	48	33	121	56
Clerical and kindred workers	67	168	184	196	109	451	460	471	-	39	30	135	160	488	441
Craftsmen, foremen, and kindred workers	130	352	260	265	189	441	368	295	-	-	9	194	286	457	344
Construction craftsmen	67	152	134	92	72	107	87	43	-	-	-	62	123	113	79
Mechanics and repairmen	23	117	47	93	57	149	160	134	-	-	-	52	124	178	115
Operatives, except transport	147	256	229	134	198	237	117	101	-	-	7	44	92	110	223
Transport equipment operatives	37	65	119	57	50	66	86	45	-	-	-	18	9	54	76
Laborers, except farm	167	139	89	31	81	106	55	76	-	5	6	17	113	50	48
Farm workers	-	-	-	-	11	-	10	-	-	-	-	-	10	6	16
Service workers[1]	230	219	272	96	195	193	205	194	-	17	37	43	139	119	141
Cleaning and food service workers	173	174	139	67	118	84	104	80	-	10	13	15	110	60	80
Protective service workers	6	7	6	-	22	17	24	31	-	-	5	11	8	27	17
Personal and health service workers	42	31	105	26	46	80	67	51	-	3	14	11	11	32	40
Private household workers	158	75	20	10	40	5	9	11	-	-	-	-	25	15	15
Female employed, 16 years old and over	438	536	580	392	422	777	754	924	-	37	166	229	300	775	713
Professional, technical, and kindred workers	28	25	33	30	54	133	123	280	-	6	87	16	47	193	68
Teachers, elementary and secondary schools	17	19	5	10	23	63	25	130	-	6	52	5	26	117	21
Managers and administrators, except farm	9	5	29	13	10	47	24	45	-	-	22	26	-	42	50
Sales workers	6	38	69	76	54	86	76	86	-	-	9	32	27	53	55
Clerical and kindred workers	31	133	122	147	76	308	295	358	-	25	24	103	98	373	349
Secretaries, stenographers, and typists	-	26	31	63	31	95	78	142	-	-	9	53	30	172	132
Operatives, including transport	56	92	73	31	57	71	68	29	-	-	-	26	31	33	68
Other blue-collar workers	11	26	17	10	18	23	8	37	-	-	-	5	7	17	29
Farm workers	-	-	-	-	-	-	5	-	-	-	-	-	-	-	-
Service workers, except private household	144	142	217	75	113	104	146	83	-	6	24	21	65	49	79
Private household workers	153	75	20	10	40	5	9	6	-	-	-	-	25	15	15

Census Tracts

	Balance of Escambia County—Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
INDUSTRY															
Total employed, 16 years old and over	**1 024**	**1 469**	**1 519**	**1 068**	**1 112**	**2 075**	**1 833**	**2 313**	–	77	451	687	**1 030**	**2 084**	**1 835**
Construction	117	299	146	112	152	144	102	118	–	–	8	55	149	112	122
Manufacturing	119	261	202	111	194	288	169	176	–	4	61	82	91	198	205
Durable goods	32	79	23	19	48	128	52	73	–	4	34	49	61	58	64
Transportation	43	51	104	47	41	135	60	85	–	–	12	34	29	68	68
Communications, utilities, and sanitary services	20	53	43	42	19	77	76	72	–	4	–	24	55	32	69
Wholesale trade	32	55	81	72	31	73	73	44	–	5	27	11	28	107	71
Retail trade	143	262	454	334	199	436	405	440	–	29	79	105	175	414	384
Finance, insurance, and real estate	10	50	62	23	35	69	93	171	–	–	20	14	29	82	101
Business and repair services	39	66	38	24	45	77	90	135	–	–	31	17	36	53	76
Personal services	265	120	100	62	82	99	52	55	–	–	16	13	59	80	77
Health services	54	34	88	50	88	117	120	159	–	–	17	26	20	86	72
Educational services	91	82	41	37	99	127	102	247	–	17	101	35	55	242	69
Other professional and related services	–	29	12	29	17	58	57	114	–	3	39	33	45	72	93
Public administration	62	92	125	111	86	307	396	477	–	15	40	189	207	518	389
Other industries	29	15	23	14	24	68	38	20	–	–	–	49	52	20	39
CLASS OF WORKER															
Total employed, 16 years old and over	**1 024**	**1 469**	**1 519**	**1 068**	**1 112**	**2 075**	**1 833**	**2 313**	–	77	451	687	**1 030**	**2 084**	**1 835**
Private wage and salary workers	820	1 177	1 223	782	820	1 367	1 121	1 271	–	31	272	305	627	1 123	1 201
Government workers	159	215	220	175	209	519	605	815	–	36	141	263	329	773	527
Local government workers	82	87	86	58	96	138	108	216	–	16	46	61	57	195	87
Self-employed workers	45	72	70	111	83	181	102	209	–	10	38	109	57	148	107
Unpaid family workers	–	5	6	–	–	8	5	18	–	–	–	10	17	40	–

¹Includes allocated cases not shown separately

Table P-3. Labor Force Characteristics of the Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Balance of Escambia County—Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
EMPLOYMENT STATUS															
Males, 16 years old and over	1 936	1 364	2 858	2 412	1 402	3 934	2 930	1 274	955	1 288	1 267	737	1 191	347	2 421
Labor force	1 611	1 225	1 615	2 020	1 107	3 364	2 189	948	725	946	776	516	849	258	2 336
Percent of total	83.2	89.8	78.5	83.7	79.0	85.5	74.2	74.4	75.9	78.3	61.2	70.0	71.3	74.4	96.5
Civilian labor force	1 314	984	1 384	1 658	1 010	1 921	2 115	924	709	946	771	506	844	258	236
Employed	1 297	946	1 325	1 608	930	1 856	2 037	862	705	866	738	481	844	252	236
Unemployed	17	38	59	50	80	65	78	62	4	80	33	25	-	6	-
Percent of civilian labor force	1.3	3.9	4.3	3.0	5.9	3.4	3.7	6.7	0.6	8.5	4.3	4.9	-	2.3	-
Not in labor force	325	139	443	392	295	570	761	326	230	262	491	221	342	89	85
Inmate of institution	-	-	-	-	-	10	12	108	-	-	-	-	-	-	-
Enrolled in school	176	56	216	94	118	247	357	102	74	71	130	56	79	30	23
Other under 65 years	81	64	158	148	103	189	226	85	87	56	190	70	144	34	13
Other 65 years and over	68	19	69	150	74	124	166	31	69	135	171	95	119	25	49
Males, 16 to 21 years old	312	121	342	222	233	1 222	574	325	183	228	274	136	180	35	927
Not enrolled in school	88	36	91	148	74	902	178	176	79	97	129	68	70	5	862
Not high school graduates	37	22	43	73	19	180	51	112	18	23	100	39	31	5	122
Unemployed or not in labor force	9	8	15	25	10	24	10	79	11	11	64	10	13	-	-
Females, 16 years old and over	2 227	1 503	2 190	2 551	1 473	2 882	3 157	1 293	924	1 282	1 499	785	1 155	345	1 809
Labor force	946	612	915	825	610	1 006	1 011	436	277	426	412	223	356	68	302
Percent of total	42.5	40.7	41.8	32.3	41.4	34.9	32.0	33.7	30.0	33.2	27.5	28.4	30.8	19.7	29.9
Civilian labor force	942	612	915	812	605	1 002	1 006	436	277	426	412	223	356	68	201
Employed	920	589	838	736	530	963	963	403	247	380	409	218	356	68	185
Unemployed	22	23	77	76	75	39	43	33	30	46	3	5	-	-	16
Percent of civilian labor force	2.3	3.8	8.4	9.4	12.4	3.9	4.3	7.6	10.8	10.8	0.7	2.2	-	-	8.0
Not in labor force	1 281	891	1 275	1 726	863	1 876	2 146	857	647	856	1 087	562	799	277	707
Married women, husband present	1 549	1 202	1 500	1 854	1 019	2 057	2 147	820	666	852	772	568	843	274	787
In labor force	608	487	621	513	405	699	736	279	215	285	214	159	266	63	190
With own children under 6 years	462	522	536	578	348	689	590	282	158	231	198	174	255	76	350
In labor force	107	123	150	99	100	170	138	104	39	62	50	49	67	18	27

Census Tracts

	Balance of Escambia County — Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
OCCUPATION															
Total employed, 16 years old and over	2 217	1 535	2 163	2 344	1 480	2 819	3 000	1 265	952	1 246	1 147	699	1 200	320	421
Professional, technical, and kindred workers	344	252	222	187	139	346	436	124	57	108	89	64	99	24	58
Health workers	39	29	17	34	13	50	54	13	-	8	19	6	6	-	4
Teachers, elementary and secondary schools	93	55	86	16	19	78	72	47	14	33	32	29	24	5	31
Managers and administrators, except farm	176	161	62	224	114	249	133	49	45	32	84	23	92	14	6
Salaried	128	165	48	194	83	188	94	40	27	18	73	4	43	-	-
Self-employed in retail trade	16		4	9	11	30	16	-	12	14	6	13	30	4	6
Sales workers	228	160	162	205	81	240	175	70	20	82	56	12	27	27	16
Retail trade	147	104	103	149	69	170	112	53	16	68	38	12	27	12	11
Clerical and kindred workers	570	408	307	484	287	499	560	131	64	116	69	56	127	20	87
Craftsmen, foremen, and kindred workers	424	241	356	603	316	620	643	246	223	244	152	125	164	78	59
Construction craftsmen	105	56	102	152	117	188	213	56	65	84	42	51	28	24	25
Mechanics and repairmen	157	92	131	200	86	147	181	55	59	68	24	36	115	31	10
Operatives, except transport	194	179	297	259	241	309	548	270	237	345	300	169	267	70	54
Transport equipment operatives	67	25	133	109	72	129	149	69	43	36	45	55	63	10	18
Laborers, except farm	31	15	185	77	67	95	144	100	61	90	105	92	74	17	14
Farm workers	5	-	-	14	15	6	30	-	139	101	37	63	199	25	75
Service workers	178	61	321	167	131	257	175	161	36	72	122	35	78	35	30
Cleaning and food service workers	87	15	208	88	72	106	77	103	14	50	64	16	24	10	15
Protective service workers	32	21	18	16	9	23	31	7	4	5	18	4	6	5	6
Personal and health service workers	54	25	75	44	46	80	58	44	6	17	24	10	37	15	5
Private household workers	-	19	118	15	27	63	5	45	22	17	88	5	10	-	4
Female employed, 16 years old and over	920	589	838	733	530	963	963	403	247	380	409	218	356	68	185
Professional, technical, and kindred workers	174	87	111	62	48	119	156	72	16	55	62	35	27	5	40
Teachers, elementary and secondary schools	81	38	59	11	11	50	52	33	10	28	29	29	12	5	25
Managers and administrators, except farm	31	21	14	25	18	19	23	10	3	16	16	-	21	4	-
Sales workers	122	62	56	69	17	111	79	43	6	27	38	-	18	-	6
Clerical and kindred workers	374	331	222	334	228	367	402	81	44	71	50	45	109	10	82
Secretaries, stenographers, and typists	141	105	98	72	101	152	156	24	34	18	-	21	30	5	39
Operatives, including transport	85	43	93	84	84	105	162	36	86	133	54	66	100	24	30
Other blue-collar workers	15	-	24	22	9	12	31	-	32	6	14	28	14	-	4
Farm workers	-	-	-	3	8	-	10	-	19	-	-	18	-	-	-
Service workers, except private household	119	26	208	122	91	167	94	116	19	55	98	21	57	25	19
Private household workers	-	19	110	15	27	63	5	45	22	17	77	5	10	-	4

Census Tracts	Balance of Escambia County – Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
INDUSTRY															
Total employed, 16 years old and over	2 217	1 535	2 163	2 344	1 480	2 819	3 000	1 265	952	1 246	1 147	699	1 200	320	421
Construction	121	90	182	257	138	291	301	114	99	155	64	135	80	23	39
Manufacturing	334	335	451	349	439	634	1 031	541	419	518	434	179	332	121	79
Durable goods	47	66	115	93	75	171	177	81	85	86	161	16	13	10	10
Transportation	38	40	43	135	56	108	92	48	31	29	21	23	22	5	14
Communications, utilities, and sanitary services	124	48	116	109	41	117	76	27	13	9	27	12	37	6	21
Wholesale trade	97	51	84	59	53	131	71	25	23	13	15	6	17	16	4
Retail trade	573	285	303	519	250	553	404	178	74	152	161	65	177	21	37
Finance, insurance, and real estate	91	102	56	98	16	51	89	17	13	4	22	–	33	4	18
Business and repair services	50	93	60	50	28	83	61	31	6	14	16	10	28	–	–
Personal services	60	75	226	85	65	142	96	77	30	38	119	11	32	20	24
Health services	60	78	119	106	59	96	124	43	6	20	46	16	51	5	9
Educational services	180	104	177	87	141	238	254	88	52	65	81	66	69	21	53
Other professional and related services	62	33	54	66	35	87	74	6	–	65	8	5	27	5	9
Public administration	406	187	249	381	124	244	253	54	33	63	77	79	47	43	29
Other industries	21	14	43	43	35	44	74	16	153	101	56	92	248	30	85
CLASS OF WORKER															
Total employed, 16 years old and over	2 217	1 535	2 163	2 344	1 480	2 819	3 000	1 265	952	1 246	1 147	699	1 200	320	421
Private wage and salary workers	1 388	1 146	1 559	1 652	1 082	2 052	2 210	1 021	650	949	920	378	755	211	204
Government workers	679	357	504	579	301	553	585	174	142	185	186	247	221	74	133
Local government workers	158	126	171	109	122	207	161	92	50	103	92	81	118	20	72
Self-employed workers	145	27	92	83	89	200	191	59	128	108	31	69	213	35	68
Unpaid family workers	5	5	8	30	8	14	14	11	32	4	10	5	11	–	16

Includes a few other cases not shown separately

Census Tracts

	Santa Rosa County — Con.					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
INDUSTRY															
Total employed, 16 years old and over	1 090	2 052	2 258	1 702	1 548	1 843	2 925	2 254	2 006	1 054	1 059	1 658	1 117	2 187	2 910
Construction	107	141	228	250	98	179	161	137	180	82	117	146	112	149	301
Manufacturing	310	530	654	270	214	119	510	342	486	153	119	207	122	294	653
Durable goods	22	43	98	75	58	38	111	86	96	55	32	23	24	128	176
Transportation	5	28	54	93	29	75	86	73	36	25	49	104	47	135	113
Communications, utilities, and sanitary services	57	34	64	54	33	34	105	115	39	28	20	48	42	77	117
Wholesale trade	9	66	31	36	66	42	89	67	56	46	32	86	72	73	131
Retail trade	177	314	378	271	269	300	473	453	310	124	150	491	356	475	553
Finance, insurance, and real estate	34	58	44	62	154	28	165	131	56	8	10	67	23	69	69
Business and repair services	28	30	40	40	30	35	126	70	51	19	39	43	24	86	83
Personal services	16	163	143	136	39	479	86	127	139	249	275	117	62	111	147
Health services	80	124	57	62	87	121	180	155	80	81	54	115	55	117	101
Educational services	85	288	156	175	172	141	416	217	239	87	97	64	37	132	249
Other professional and related services	10	38	91	61	96	17	115	107	54	29	-	17	29	72	87
Public administration	137	217	244	179	249	158	349	218	255	87	62	130	122	329	257
Other industries	35	21	74	13	12	115	64	42	25	36	35	23	14	68	49
CLASS OF WORKER															
Total employed, 16 years old and over	1 090	2 052	2 258	1 702	1 548	1 843	2 925	2 254	2 006	1 054	1 059	1 658	1 117	2 187	2 910
Private wage and salary workers	749	1 353	1 616	1 109	1 008	1 347	1 984	1 621	1 482	716	837	1 [illegible]	[illegible]	1 440	2 [illegible]
Government workers	283	599	500	438	442	370	879	504	474	301	177	241	56	545	[illegible]
Local government workers	132	321	155	167	134	167	347	211	163	166	88	102	58	142	217
Self-employed workers	58	100	110	155	93	122	103	129	46	37	45	74	111	194	205
Unpaid family workers	-	-	32	-	5	4	9	-	4	-	-	6	-	8	14

'Includes allocated cases, not shown separately.

able P-4. Income Characteristics of the Population: 1970

[Data based on sample, see text. For maximum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

ensus Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
COME IN 1969 OF FAMILIES AND NRELATED INDIVIDUALS															
All families	60 658	51 817	15 189	35 998	9 641	28	965	1 228	1 275	862	1 141	721	1 842	975	1 894
ss than $1,000	2 201	1 812	574	1 238	389	4	58	71	111	10	112	29	43	9	38
,000 to $1,999	2 830	2 302	850	1 452	528	-	111	50	191	21	122	92	108	-	35
,000 to $2,999	3 324	2 819	916	1 903	505	5	99	57	148	18	133	139	98	17	47
,000 to $3,999	3 824	3 148	980	2 168	676	3	131	99	132	22	175	93	106	35	39
,000 to $4,999	4 026	3 334	985	2 349	692	-	103	82	146	23	115	64	102	49	84
,000 to $5,999	4 605	3 867	1 001	2 866	738	5	130	145	129	39	89	52	113	50	62
,000 to $6,999	4 941	4 164	962	3 202	777	-	40	94	149	17	82	44	157	76	92
,000 to $7,999	4 688	3 959	955	3 004	729	-	52	95	56	39	69	76	113	61	109
,000 to $8,999	4 635	3 859	1 040	2 819	776	-	25	83	85	35	78	53	129	87	105
,000 to $9,999	4 431	3 805	871	2 934	626	-	62	82	29	42	68	24	106	47	99
0,000 to $11,999	6 988	5 924	1 581	4 343	1 064	6	63	155	39	86	47	22	144	90	171
2,000 to $14,999	6 783	5 787	1 858	3 929	996	-	58	136	25	80	33	26	129	115	295
5,000 to $24,999	6 006	5 051	1 957	3 094	955	5	28	84	17	74	18	7	170	245	524
5,000 to $49,999	1 104	954	472	482	150	-	5	5	18	46	-	-	20	79	178
0,000 or more	272	232	107	125	40	-	-	-	-	10	-	-	4	15	16
dian income	$7 977	$8 027	$8 319	$7 924	$7 707	$5 400	$4 811	$7 221	$4 380	$10 349	$4 248	$4 117	$7 389	$11 256	$12 671
an income	$9 074	$9 159	$9 933	$8 834	$8 623	$6 884	$5 788	$7 690	$5 241	$12 764	$4 986	$4 997	$8 440	$13 969	$14 105
milies and unrelated individuals	83 689	70 885	20 483	50 402	12 804	128	1 570	1 695	1 686	835	1 782	1 200	2 296	1 332	2 299
Median income	$6 201	$6 219	$6 384	$6 169	$6 103	$3 563	$3 297	$5 940	$3 552	$7 765	$3 230	$3 213	$5 759	$8 750	$10 878
Mean income	$7 442	$7 483	$8 224	$7 182	$7 214	$5 563	$4 474	$6 672	$4 478	$9 879	$3 929	$4 055	$6 885	$11 589	$12 630
related individuals	23 031	19 868	5 374	14 494	3 163	100	605	457	411	273	641	479	754	357	405
Median income	$2 049	$2 075	$2 116	$2 065	$1 950	$3 308	$1 547	$2 939	$1 509	$2 792	$1 405	$1 661	$2 493	$3 694	$3 890
Mean income	$3 144	$3 180	$3 419	$3 091	$2 919	$5 193	$2 378	$3 914	$2 109	$3 939	$2 047	$2 637	$3 705	$5 087	$5 731

.ensus Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
PE OF INCOME IN 1969 OF FAMILIES															
All families	60 658	$1 817	15 109	35 908	9 641	28	965	1 238	1 275	562	1 141	721	1 542	975	1 894
th wage or salary income	53 273	44 891	13 074	31 817	8 382	28	748	1 042	1 081	440	988	598	1 263	818	1 644
Mean wage or salary income	$8 397	$8 427	$8 819	$8 266	$8 233	$4 495	$5 458	$7 704	$4 973	$10 830	$4 847	$4 718	$8 084	$11 016	$12 164
th nonfarm self-employment income	5 396	4 604	1 520	3 084	792	6	74	120	102	104	21	66	124	216	286
Mean nonfarm self-employment income	$6 428	$6 505	$8 395	$5 573	$5 979	...	$5 055	$2 041	$5 732	$7 682	...	$2 836	$4 449	$10 500	$13 814
th farm self-employment income	1 105	642	122	520	463	–	4	–	–	5	4	–	–	28	27
Mean farm self-employment income	$2 708	$2 190	$786	$2 519	$3 426	–	...	–	–	...	...	–	–	$923	-$1 048
th Social Security income	9 594	8 145	2 953	5 192	1 449	–	299	231	217	180	330	181	413	274	257
Mean Social Security income	$1 478	$1 490	$1 527	$1 469	$1 408	–	$1 423	$1 489	$1 200	$1 682	$1 272	$1 574	$1 611	$1 930	$1 447
th public assistance or public welfare income	4 119	3 556	1 293	2 263	563	–	198	62	260	59	272	132	76	–	38
Mean public assistance or public welfare income	$807	$790	$787	$792	$911	–	$926	$637	$697	$836	$795	$699	$900	–	$641
th other income	19 638	16 950	5 727	11 223	2 688	–	308	417	224	282	180	113	673	566	1 005
Mean other income	$2 441	$2 518	$2 862	$2 342	$1 954	–	$1 685	$2 073	$1 251	$4 448	$1 020	$1 919	$2 258	$3 156	$2 387
TIO OF FAMILY INCOME TO POVERTY LEVEL															
cent of families with incomes															
Less than .50 of poverty level	6 1	6 2	7 4	5 7	5 8	14.3	13.1	9.0	19.8	4 3	15.3	13 7	5.3	0.9	2.6
.50 to .74	4 2	4 1	4 4	3 9	5.3	–	7.6	4.0	9 9	2 1	11.6	11.7	3.8	–	1.0
.75 to .99	5 1	5.0	5.3	4 9	5.3	17.9	10.5	3.5	11.4	2.5	12.0	16.6	6.3	1.0	0.8
1 00 to 1.24	5 9	5 8	5 3	6.0	6.5	10.7	9.5	5 6	11.8	2 3	12 1	8.5	5.0	1.2	2.1
1 25 to 1 49	6 3	6.2	5 4	6 6	6.9	–	10 8	4 0	10.1	3 9	8 7	6 4	6.8	3.8	3.5
1.50 to 1.99	13.3	13.2	11.3	14.0	13.4	17.9	12 4	15.5	17.2	11 9	13 8	14 7	12.4	5.8	8.8
2 00 to 2.99	24 1	23 8	20 7	25 1	25 4	17.9	16 1	23 9	10.3	20.1	15 0	18 7	21.5	22.8	18.6
3 00 or more	35.0	35 6	40.2	33 7	31.4	21 4	20 1	34.5	9.5	52.8	11.5	9.7	38 9	64 4	62.7
COME BELOW POVERTY LEVEL															
Number	9 374	7 796	2 576	5 220	1 578	9	300	204	524	50	444	303	238	19	83
Percent of all families	15.5	15.3	17.0	14.5	16 4	32 1	31.1	16.5	41.1	8.9	38 9	42.0	15.4	1.9	4 4
Mean family income	$1 994	$2 015	$1 980	$2 032	$1 888	...	$2 078	$1 818	$1 962	$1 612	$2 125	$2 337	$1 878	...	$989
Mean income deficit	$1 635	$1 658	$1 733	$1 621	$1 523	...	$1 586	$1 993	$1 964	$1 566	$1 702	$1 603	$1 260	...	$1 898
Percent receiving public assistance income	24.8	25.7	28.9	24 1	20.5	–	39.3	21.1	34.4	26.0	36 7	31.0	11.3	–	14.5
Mean size of family	4.01	4.07	4.14	4.04	3 72	...	4 17	4.30	4.34	3 54	4 31	4.62	3.32	...	2.84
With related children under 18 years	6 500	5 486	1 870	3 616	1 014	4	180	166	427	21	350	249	105	14	45
Mean number of related children under 18 years	2.99	3.02	3.04	3.02	2.81	...	3.52	2 77	2.99	...	3.07	3.33	2.75	...	2.11
With related children under 6 years	3 563	3 020	1 020	2 000	543	4	108	101	183	10	168	157	82	–	31
Mean number of related children under 6 years	1.66	1.66	1.59	1.69	1.64	...	1.49	1.44	1.45	...	1 48	1.88	1 44	–	1.16
Families with female head	3 568	3 128	1 320	1 808	440	–	149	65	331	31	257	128	89	–	41

Census Tracts

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
With related children under 18 years	2 997	2 616	1 101	1 515	381	–	108	60	303	21	209	112	46	–	33
Mean number of related children under 18 years	2.82	2.80	2.83	2.77	2.98	–	3.07	2.05	2.89	...	2.81	3.01	2.15	–	1.94
With related children under 6 years	1 352	1 209	548	661	143	–	51	27	123	10	96	53	42	–	26
Percent in labor force	43.5	43.6	53.5	35.4	42.7	–	17.6	77.8	69.9	...	51.0	50.9	31.0	–	–
Mean number of related children under 6 years	1.55	1.54	1.50	1.58	1.66	–	1.27	1.00	1.50	...	1.51	1.77	1.29	–	1.00
By heads	**9 374**	**7 796**	**2 576**	**5 220**	**1 578**	**9**	**300**	**204**	**524**	**50**	**444**	**303**	**238**	**19**	**83**
Percent 65 years and over	18.1	17.8	20.1	16.7	19.8	–	26.7	23.0	19.1	48.0	15.3	17.5	32.8	...	15.7
Civilian male heads under 65 years	3 900	3 233	903	2 330	667	9	96	102	140	–	167	136	91	10	22
Percent in labor force	70.9	71.2	75.5	69.5	69.7	...	84.4	85.3	67.9	–	70.7	83.1	62.6	...	...
Unrelated individuals	**6 011**	**5 247**	**2 339**	**2 908**	**764**	**28**	**369**	**175**	**250**	**96**	**398**	**270**	**284**	**87**	**107**
Percent of all unrelated individuals	43.9	43.4	44.5	42.5	47.9	28.0	61.0	38.3	60.8	35.2	62.1	56.4	37.9	24.4	26.4
Mean income	$802	$802	$844	$769	$799	$1 114	$930	$847	$820	$762	$804	$726	$888	$971	$636
Mean income deficit	$1 010	$1 013	$975	$1 043	$995	$667	$902	$957	$1 036	$1 029	$1 026	$1 071	$899	$860	$1 179
Percent receiving public assistance income	20.7	19.7	19.4	19.9	28.1	–	21.4	22.9	24.4	6.3	21.6	23.3	7.3	19.5	19.6
Percent 65 years and over	45.7	45.4	47.2	44.0	47.8	75.0	41.2	59.4	32.8	50.0	39.9	58.9	56.3	41.4	44.9
Persons	**43 643**	**37 012**	**12 996**	**24 016**	**6 631**	**58**	**1 621**	**1 053**	**2 525**	**273**	**2 312**	**1 670**	**1 075**	**154**	**343**
Percent of all persons	18.8	18.8	21.9	17.5	18.4	30.5	42.2	22.6	45.7	12.1	45.6	51.8	19.3	4.6	4.9
Percent receiving Social Security income	12.9	12.9	13.1	12.8	13.2	36.2	15.2	12.3	6.9	30.0	12.6	13.5	20.2	31.2	18.7
Percent 65 years and over	12.7	12.5	14.7	11.4	13.3	36.2	16.8	16.0	8.8	33.3	11.0	14.7	26.5	32.5	20.1
Percent receiving Social Security income	64.0	64.7	64.4	64.9	60.2	...	67.6	58.3	52.9	84.6	60.2	65.3	62.1	76.0	85.5
Related children under 18 years	19 290	16 671	5 666	11 005	2 619	10	615	447	1 227	86	1 150	775	276	33	92
Percent living with both parents	49.8	48.9	38.8	54.1	55.4	...	30.7	72.5	28.1	–	34.6	47.4	67.8	100.0	9.8
Households	**12 197**	**10 627**	**4 052**	**6 575**	**1 570**	**18**	**532**	**323**	**662**	**109**	**738**	**445**	**425**	**82**	**169**
Percent of all households	19.3	19.4	22.1	18.1	18.4	20.5	39.4	21.5	44.4	15.6	46.6	46.1	20.7	6.6	7.8
Owner occupied	6 584	5 706	1 964	3 742	878	–	198	170	281	64	354	128	258	70	115
Mean value of unit	$9 300	$9 500	$10 300	$9 100	$8 100	–	$7 100	$6 800	$9 400	$11 300	$7 000	$7 600	$13 800	$15 800	$17 400
Renter occupied	5 613	4 921	2 088	2 833	692	18	334	153	381	45	384	317	167	12	54
Mean gross rent	$69	$69	$66	$71	$66	...	$71	$73	$57	$69	$56	$51	$73	...	$124
Percent lacking some or all plumbing facilities	22.3	22.3	21.0	23.1	22.4	...	29.3	17.6	20.4	27.5	42.3	16.0	4.9	–	–

[1]Excludes inmates of institutions, members of the Armed Forces living in barracks, college students in dormitories and unrelated individuals under 14 years

Table P-4. Income Characteristics of the Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Pensacola—Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
INCOME IN 1969 OF FAMILIES AND UNRELATED INDIVIDUALS															
All families	1 772	622	1 563	184	343	16	91	45	79	53	66	373	1 028	1 528	398
Less than $1,000	18	4	15	16	36	–	–	–	–	–	17	10	10	36	23
$1,000 to $1,999	–	4	28	57	26	–	–	–	5	–	–	8	10	49	25
$2,000 to $2,999	10	16	57	35	33	4	–	–	–	–	5	5	47	80	41
$3,000 to $3,999	23	38	68	4	–	–	–	7	5	–	4	20	40	64	71
$4,000 to $4,999	44	21	52	19	67	–	9	–	5	–	15	32	57	105	45
$5,000 to $5,999	28	56	56	8	17	6	5	11	–	–	5	12	76	121	47
$6,000 to $6,999	58	44	54	9	41	–	–	–	5	–	6	36	80	149	30
$7,000 to $7,999	84	43	91	4	37	6	5	6	4	5	–	20	65	108	16
$8,000 to $8,999	133	53	101	16	15	–	22	5	15	–	–	25	72	161	49
$9,000 to $9,999	137	47	103	3	5	–	9	–	8	–	5	44	102	148	20
$10,000 to $11,999	278	122	299	–	28	–	15	5	5	6	–	103	171	160	8
$12,000 to $14,999	534	104	255	5	23	–	11	11	–	18	9	44	145	164	16
$15,000 to $24,999	366	59	295	4	5	–	5	–	27	24	–	14	107	149	7
$25,000 to $49,999	49	11	51	–	–	–	10	–	–	–	–	–	41	34	–
$50,000 or more	10	–	38	4	10	–	–	–	–	–	–	–	5	–	–
Median income	$12 410	$9 681	$11 047	$2 543	$5 559	...	$9 500	$7 750	$9 063	$14 583	$4 467	$9 420	$9 559	$8 323	$4 867
Mean income	$12 654	$9 962	$12 763	$20 540	$8 185	...	$12 229	$8 139	$10 203	$14 285	$4 916	$8 784	$10 540	$9 030	$5 496
Families and unrelated individuals	1 884	926	1 766	190	514	29	137	76	79	59	205	440	1 370	1 826	515
Median income	$12 206	$6 971	$10 429	$2 629	$4 286	$4 643	$8 518	$5 000	$9 063	$14 083	$1 654	$8 400	$8 307	$7 362	$3 816
Mean income	$12 313	$7 526	$11 834	$20 004	$6 092	$4 403	$9 636	$5 880	$10 203	$12 908	$2 786	$7 753	$9 001	$8 040	$4 490
Unrelated individuals	112	304	203	6	171	13	46	31	–	6	139	67	342	298	117
Median income	$6 067	$1 469	$3 544	...	$1 284	...	$3 000	$2 357	–	...	$1 244	$2 405	$3 255	$1 892	$957
Mean income	$6 906	$2 541	$4 686	...	$1 895	...	$4 508	$2 600	–	...	$1 775	$2 012	$4 378	$2 965	$1 068

Census Tracts	Pensacola — Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
TYPE OF INCOME IN 1969 OF FAMILIES															
All families	1 772	622	1 563	184	343	16	91	45	79	53	66	373	1 028	1 528	398
With wage or salary income	1 730	570	1 412	157	282	16	87	38	79	53	50	345	961	1 379	367
Mean wage or salary income	$11 803	$9 522	$10 869	$3 811	$5 510	...	$10 421	$7 567	$9 477	$13 651	$5 248	$8 172	$9 271	$8 766	$5 268
With nonfarm self-employment income	146	36	183	-	21	-	10	-	5	-	5	53	86	112	16
Mean nonfarm self-employment income	$3 107	$5 939	$15 353	-	...	-	...	-	...	-	...	$5 156	$6 398	$4 704	...
With farm self-employment income	14	16	19	-	5	-	-	-	-	-	-	..	14	5	-
Mean farm self-employment income	...	...	...	-	..	-	-	-	-	-	-	-	...	...	-
With Social Security income	124	89	199	37	81	-	14	12	15	-	14	47	173	214	80
Mean Social Security income	$1 768	$2 126	$1 502	$826	$1 164	-	...	...	...	-	...	$1 372	$1 553	$1 529	$1 290
With public assistance or public welfare income	11	13	26	79	55	-	-	7	5	-	-	10	43	55	56
Mean public assistance or public welfare income	...	...	$588	$1 070	$717	-	-	...	...	-	-	...	$835	$878	$465
With other income	857	213	689	12	69	-	40	34	27	18	18	85	364	484	42
Mean other income	$1 554	$1 603	$2 026	...	$14 374	-	$3 621	$1 544	$402	...	...	$1 362	$2 943	$1 633	$1 052
RATIO OF FAMILY INCOME TO POVERTY LEVEL[1]															
Percent of families with incomes:															
Less than .50 of poverty level	1.0	1.4	2.6	31.0	16.9	-	-	-	6.3	-	25.8	4.8	1.5	4.3	7.3
.50 to .74	-	0.6	2.8	17.9	8.2	-	..	-	..	-	6.1	..	1.5	3.9	18.8
.75 to .99	0.9	3.9	1.1	12.0	7.0	...	-	-	-	-	-	3.8	4.4	5.0	13.6
1.00 to 1.24	1.7	3.2	2.1	8.7	9.0	-	-	13.3	6.3	-	22.7	7.2	1.8	3.1	10.1
1.25 to 1.49	2.4	1.6	3.5	10.9	7.9	...	5.5	-	-	-	-	4.0	5.2	8.2	11.6
1.50 to 1.99	4.6	11.9	12.3	1.6	11.4	-	15.4	28.9	17.7	-	-	9.9	10.5	14.7	17.3
2.00 to 2.99	26.7	33.1	23.7	9.2	24.5	...	30.8	11.1	22.8	9.4	24.2	34.0	28.6	26.4	14.8
3.00 or more	62.6	44.2	52.1	8.7	15.2	-	48.4	46.7	46.8	90.6	21.2	36.2	46.7	34.2	6.5
INCOME BELOW POVERTY LEVEL[1]															
Families	34	37	100	112	110	4	-	-	5	-	21	32	75	202	158
Percent of all families	1.9	5.9	6.4	60.9	32.1	...	-	-	6.3	-	31.8	8.6	7.3	13.2	39.7
Mean family income	$1 596	$2 309	$1 949	$1 837	$1 973	...	-	-	...	-	...	$2 125	$2 402	$2 204	$2 846
Mean income deficit	$2 461	$1 216	$1 564	$1 912	$1 992	...	-	-	...	-	...	$1 387	$929	$1 333	$1 413
Percent receiving public assistance income	-	-	16.0	54.5	15.5	-	-	-	-	-	-	21.9	25.3	20.3	22.8
Mean size of family	4.62	3.78	3.77	4.15	4.38	...	-	-	...	-	...	3.81	3.49	3.83	5.11
With related children under 18 years	34	22	71	96	86	-	-	-	-	-	10	27	60	139	127
Mean number of related children under 18 years	3.00	...	2.55	3.09	2.97	-	-	-	-	-	...	2.52	2.05	2.60	3.54
With related children under 6 years	19	13	44	71	29	-	-	-	-	-	-	13	31	78	63
Mean number of related children under 6 years	..	...	1.59	1.59	2.34	-	-	-	-	-	-	...	1.39	1.36	1.57

Census Tracts

	Pensacola – Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	T 0
Families with female head	23	17	58	88	43	–	–	–	–	–	6	15	17	60	
With related children under 18 years	23	17	48	82	39	–	–	–	–	–	6	15	17	56	
Mean number of related children under 18 years	...	...	2.83	3.09	2.49	–	–	–	–	–	...	...	...	2.93	2
With related children under 6 years	13	13	28	66	–	–	–	–	–	–	–	7	9	29	
Percent in labor force	...	–	89.3	77.3	–	–	–	–	–	–	–	...	–	24.1	
Mean number of related children under 6 years	...	..	1.61	1.64	–	–	–	–	–	–	–	...	...	1.17	
Family heads	34	37	100	112	110	4	–	–	5	–	21	32	75	202	
Percent 65 years and over	–	16.2	6.0	11.6	18.2	–	–	–	–	–	...	–	30.7	18.8	1
Civilian male heads under 65 years	11	9	26	24	51	4	–	–	5	–	–	17	34	85	
Percent in labor force	...	...	69.2	...	78.4	...	–	–	...	–	–	...	82.4	77.6	5
Unrelated individuals	8	67	52	–	110	–	17	13	–	6	95	25	102	128	
Percent of all unrelated individuals	7.1	36.8	25.6	–	64.3	–	37.0	41.9	–	...	68.3	37.3	29.8	43.0	8
Mean income	...	$999	$942	–	$740	–	...	...	–	...	$689	-$92	$791	$775	$1
Mean income deficit	...	$808	$864	–	$1,126	–	...	...	–	...	$1,148	$1,603	$1,048	$1,051	$1
Percent receiving public assistance income	...	9.0	19.2	–	35.5	–	–	–	–	–	16.8	24.0	12.7	12.5	
Percent 65 years and over	...	56.7	67.3	–	30.0	–	...	..	–	–	36.8	24.0	32.4	33.6	1
Persons	165	207	429	465	592	8	17	13	10	6	161	147	364	902	9
Percent of all persons	2.4	9.0	7.3	56.8	37.9	11.6	5.0	8.2	3.3	2.7	49.8	10.3	9.9	15.4	4
Percent receiving Social Security income	2.4	21.7	9.8	3.0	11.5	–	..	..	..	–	20.5	2.7	24.5	15.7	1
Percent 65 years and over	4.8	21.3	13.5	4.1	13.7	–	.	..	–	–	32.9	4.1	16.8	14.1	
Percent receiving Social Security income	...	72.7	65.5	...	56.8	–	..	...	–	–	62.3	–	72.1	46.5	6
Related children under 18 years	93	66	189	324	283	–	–	–	–	–	27	77	132	378	
Percent living with both parents	24.7	24.2	31.2	22.8	58.3	–	–	–	–	–	–	53.2	74.2	35.4	4
Households	32	61	129	103	179	4	17	13	5	6	44	44	114	258	3
Percent of all households	1.7	8.9	7.7	56.9	39.3	13.8	13.6	17.1	6.8	10.2	52.4	11.6	10.4	16.5	4
Owner occupied	21	41	102	21	114	4	10	13	–	–	16	30	66	181	
Mean value of unit	...	$19,800	$13,500	...	$10,900	...	...	...	–	–	...	$6,700	$12,100	$10,400	$
Renter occupied	11	20	27	82	65	–	7	–	5	6	28	14	48	69	
Mean gross rent	...	...	$129	$56	$52	–	–	–	...	...	$81	...	$110	$56	
Percent lacking some or all plumbing facilities	–	–	4.7	–	30.2	...	–	–	–	–	40.9	47.7	3.5	24.0	

[1]Excludes inmates of institutions, members of the Armed Forces living in barracks, college students in dormitories, and unrelated individuals under 14 years

Table P-4. Income Characteristics of the Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Balance of Escambia County—Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
INCOME IN 1969 OF FAMILIES AND UNRELATED INDIVIDUALS															
All families	**692**	**1 177**	**1 183**	**832**	**931**	**1 857**	**1 841**	**2 043**	**–**	**422**	**342**	**718**	**1 839**	**1 863**	**1 518**
Less than $1,000	34	113	56	8	26	50	63	51	–	17	9	13	40	37	4
$1,000 to $1,999	73	87	78	22	69	52	95	44	–	22	4	20	32	37	29
$2,000 to $2,999	54	99	107	61	85	107	111	119	–	18	–	37	94	48	51
$3,000 to $3,999	107	139	110	83	78	113	154	64	–	27	10	30	102	82	93
$4,000 to $4,999	56	115	130	74	47	171	162	115	–	14	13	50	93	41	68
$5,000 to $5,999	93	96	96	78	90	214	140	201	–	48	7	52	107	143	97
$6,000 to $6,999	88	59	100	60	124	177	209	205	–	39	–	56	95	162	125
$7,000 to $7,999	60	90	121	104	66	172	159	116	–	28	31	53	123	128	191
$8,000 to $8,999	40	71	22	55	66	126	122	142	–	13	16	51	55	111	207
$9,000 to $9,999	24	61	101	101	46	165	155	161	–	13	7	57	45	178	144
$10,000 to $11,999	25	110	101	83	112	173	196	258	–	51	26	87	115	267	190
$12,000 to $14,999	20	75	111	64	90	160	137	221	–	51	55	93	71	251	185
$15,000 to $24,999	15	58	50	39	27	155	123	259	–	73	39	101	38	334	126
$25,000 to $49,999	–	–	–	–	5	14	15	60	–	8	25	13	17	35	8
$50,000 or more	3	4	–	–	–	8	–	27	–	–	–	5	12	9	–
Median income	$5 237	$5 370	$6 145	$7 288	$6 569	$7 259	$6 935	$8 750	–	$7 929	$11 846	$8 941	$6 542	$9 801	$8 488
Mean income	$8 770	$6 491	$6 740	$7 527	$7 097	$8 266	$7 662	$10 548	–	$9 662	$12 295	$10 280	$7 953	$10 757	$9 052
Families and unrelated individuals	894	1 383	1 525	1 083	1 135	2 340	2 234	2 576	1 572	3 312	520	889	1 269	3 643	1 729
Median income	$4 171	$4 764	$4 977	$5 948	$6 139	$6 413	$6 128	$8 029	$2 285	$2 151	$7 000	$8 369	$5 706	$5 318	$8 156
Mean income	$7 326	$5 857	$5 855	$6 376	$7 037	$7 505	$6 778	$9 529	$2 942	$3 391	$8 261	$9 419	$7 026	$6 932	$8 504
Unrelated individuals	202	206	342	251	204	483	393	533	1 572	2 890	278	171	230	1 780	211
Median income	$1 634	$1 444	$1 643	$1 772	$3 917	$3 430	$2 225	$3 990	$2 285	$1 934	$5 077	$3 841	$1 833	$2 228	$3 870
Mean income	$2 377	$2 234	$2 794	$2 559	$6 759	$4 581	$2 641	$5 624	$2 942	$2 475	$4 749	$5 805	$2 839	$2 930	$4 566

Census Tracts

	Balance of Escambia County—Con.														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
TYPE OF INCOME IN 1969 OF FAMILIES															
All families	**692**	**1 177**	**1 183**	**832**	**931**	**1 857**	**1 841**	**2 043**	–	**422**	**242**	**718**	**1 039**	**1 863**	**1 518**
With wage or salary income	637	1 046	1 004	717	780	1 655	1 648	1 763	–	398	190	567	873	1 643	1 417
Mean wage or salary income	$5 126	$6 323	$6 573	$7 061	$6 882	$7 785	$7 410	$8 708	–	$9 466	$12 346	$9 191	$7 510	$9 806	$8 274
With nonfarm self-employment income	35	72	104	120	84	183	91	258	–	28	48	106	87	214	135
Mean nonfarm self-employment income	$4 373	$5 646	$2 871	$4 855	$5 596	$5 011	$4 530	$9 453	–	$4 546	$5 602	$3 061	$3 620	$7 249	$4 435
With farm self-employment income	5	5	–	9	–	4	5	15	–	11	–	4	5	5	6
Mean farm self-employment income	...	...	–	...	–	...	...	...	–	...	–	...	...	...	...
With Social Security income	123	144	284	161	238	255	223	274	–	13	27	154	172	191	229
Mean Social Security income	$1 272	$1 277	$1 445	$1 327	$1 463	$1 587	$1 245	$1 468	–	...	$2 313	$1 249	$1 831	$1 511	$1 597
With public assistance or public welfare income	109	177	208	54	85	56	113	47	–	–	6	16	85	61	54
Mean public assistance or public welfare income	$598	$851	$623	$696	$994	$887	$612	$550	–	–	...	...	$914	$700	$722
With other income	85	180	335	267	242	642	628	968	–	160	127	379	389	779	528
Mean other income	$28 461	$1 565	$1 598	$1 376	$1 392	$1 701	$1 767	$3 432	–	$1 413	$2 290	$4 318	$2 542	$2 609	$1 911
RATIO OF FAMILY INCOME TO POVERTY LEVEL[1]															
Percent of families with incomes															
Less than .50 of poverty level	13.3	16.5	6.8	1.6	6.4	3.8	4.7	4.1	–	6.4	3.7	2.4	4.7	2.8	1.9
.50 to .74	10.4	7.1	6.5	2.6	8.3	3.8	4.7	2.3	–	4.3	2.5	2.8	5.4	2.1	1.8
.75 to .99	7.1	9.2	10.7	8.7	3.8	5.4	6.9	2.9	–	5.0	5.4	3.3	8.3	1.4	3.6
1.00 to 1.24	15.8	10.0	9.0	5.5	9.2	4.3	8.3	5.0	–	13.5	–	6.0	9.6	3.8	4.3
1.25 to 1.49	15.9	7.2	8.4	4.3	9.5	7.6	8.0	3.1	–	6.4	–	5.4	8.7	6.3	5.0
1.50 to 1.99	13.7	12.6	12.8	21.9	13.9	16.0	14.7	10.4	–	12.3	3.3	10.9	16.7	11.0	14.6
2.00 to 2.99	15.5	16.7	18.3	22.0	25.3	28.2	21.5	26.8	–	20.4	19.4	25.9	17.2	27.0	36.5
3.00 or more	8.4	20.6	27.6	33.4	23.6	31.0	31.2	45.3	–	31.8	65.7	43.3	29.4	45.6	32.3
INCOME BELOW POVERTY LEVEL[1]															
Families	**213**	**386**	**284**	**107**	**173**	**241**	**300**	**192**	–	**66**	**28**	**61**	**191**	**117**	**111**
Percent of all families	30.8	32.8	24.0	12.9	18.5	13.0	16.3	9.4	–	15.6	11.6	8.5	18.4	6.3	7.3
Mean family income	$2 418	$1 992	$2 121	$2 203	$2 059	$2 086	$2 017	$1 801	–	$2 017	$2 202	$1 924	$2 353	$1 591	$2 692
Mean income deficit	$1 879	$1 929	$1 172	$910	$1 698	$1 250	$1 265	$1 429	–	$2 030	$2 128	$1 861	$1 411	$1 766	$1 154
Percent receiving public assistance income	35.2	23.1	45.8	21.5	33.1	8.7	20.7	8.3	–	...	–	16.4	16.8	5.1	10.8
Mean size of family	5.27	4.49	3.51	3.23	4.17	3.40	3.45	3.47	–	4.45	5.07	4.61	4.34	3.42	4.23
With related children under 18 years	166	295	166	48	111	137	208	124	–	66	24	46	135	72	81
Mean number of related children under 18 years	4.29	3.34	2.63	2.65	2.92	2.77	2.17	2.25	–	2.92	...	3.59	3.30	2.69	3.26
With related children under 6 years	98	219	68	21	44	55	124	78	–	49	5	37	62	42	57
Mean number of related children under 6 years	2.31	1.62	1.88	...	1.64	1.27	1.80	1.96	–	1.16	...	1.16	1.65	1.26	2.19

Census Tracts	Balance of Escambia County—Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
Families with female head	97	140	89	39	87	68	89	74	-	22	-	20	48	34	32
With related children under 18 years	75	132	61	21	63	51	80	62	-	22	-	20	48	34	32
Mean number of related children under 18 years	3.80	3.02	1.59	...	2.29	2.22	1.64	1.92	-	...	-	...	2.71	2.15	3.72
With related children under 6 years	32	86	12	3	11	-	17	20	-	22	-	11	21	15	18
Percent in labor force	65.6	48.8	...	...	...	-	-	-	-	-	-	-	-	...	...
Mean number of related children under 6 years	2.50	1.34	...	...	...	-	...	...	-	...	-	...	...	...	...
Family heads	**213**	**386**	**284**	**107**	**172**	**241**	**300**	**192**	-	**66**	**28**	**61**	**191**	**117**	**111**
Percent 65 years and over	6.1	8.8	21.5	44.9	14.5	17.4	14.3	12.5	-	-	-	9.8	18.8	8.5	11.7
Civilian male heads under 65 years	106	216	141	38	64	83	81	71	-	12	28	41	97	61	46
Percent in labor force	68.9	80.6	51.1	73.7	62.5	67.5	87.7	81.7	-	...	85.7	75.6	79.4	63.9	89.1
Unrelated individuals	**108**	**118**	**190**	**132**	**55**	**158**	**169**	**138**	-	**12**	**60**	**37**	**119**	**28**	**51**
Percent of all unrelated individuals	53.5	57.3	55.6	52.6	27.0	32.7	43.0	25.9	-	...	22.4	21.6	51.7	17.5	24.2
Mean income	$788	$624	$805	$731	$958	$809	$903	$963	-	...	$673	$696	$777	$688	$822
Mean income deficit	$1 032	$1 187	$1 014	$1 092	$871	$988	$870	$836	-	...	$1 207	$1 124	$1 061	$1 175	$1 011
Percent receiving public assistance income	14.8	14.4	27.9	15.2	21.8	10.8	18.9	8.7	-	-	-	16.2	13.4	17.9	-
Percent 65 years and over	48.1	54.2	41.6	45.5	52.7	57.0	59.8	49.3	-	-	-	43.2	33.6	39.3	31.4
Persons	**1 231**	**1 853**	**1 186**	**478**	**772**	**977**	**1 203**	**804**	-	**306**	**202**	**318**	**948**	**428**	**570**
Percent of all persons	39.3	38.5	27.2	16.4	22.0	15.2	18.0	11.6	-	15.7	20.6	12.5	24.4	6.3	9.2
Percent receiving Social Security income	8.6	6.0	21.3	35.8	15.8	15.0	15.3	13.9	-	-	6.9	5.(	9.6	11.4	11.2
Percent 65 years and over	5.8	6.1	16.5	28.9	10.1	15.1	14.6	15.3	-	-	-	6.9	10.3	7.5	7.9
Percent receiving Social Security income	68.1	48.7	73.5	89.1	64.1	64.2	85.8	68.3	-	-	-	...	61.2	68.8	100.0
Related children under 18 years	621	1 011	462	144	356	377	433	288	-	191	68	167	463	196	255
Percent living with both parents	44.8	51.3	64.9	77.8	51.4	71.6	69.1	58.3	-	49.2	100.0	40.1	57.0	60.2	50.6
Households	**286**	**468**	**415**	**191**	**187**	**339**	**418**	**290**	-	**72**	**55**	**86**	**243**	**127**	**141**
Percent of all households	35.8	37.8	30.5	20.4	20.6	16.2	20.4	12.1	-	16.6	14.7	12.4	23.9	6.6	8.6
Owner occupied	144	192	238	131	124	180	114	146	-	-	11	48	125	67	78
Mean value of unit	$9 500	$7 300	$6 300	$6 800	$7 300	$9 000	$9 900	$11 900	-	-	...	$14 800	$8 300	$14 900	$11 500
Renter occupied	142	276	177	60	63	159	304	144	-	72	44	38	118	60	63
Mean gross rent	$63	$56	$73	$84	$64	$93	$61	$100	-	$28	$112	$92	$59	$118	$103
Percent lacking some or all plumbing facilities	47.6	18.6	18.3	2.6	25.7	1.5	1.7	4.1	-	-	7.3	10.5	25.1	7.9	-

'Excludes inmates of institutions, members of the Armed Forces living in barracks, college students in dormitories, and unrelated individuals under 14 years.

Table P-4 · Income Characteristics of the Population: 1970—Continued

[Data based on sample. see text. For [illegible] area for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	[illegible] of Escambia County—Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tra 01
INCOME IN 1969 OF FAMILIES AND UNRELATED INDIVIDUALS															
All families	1 772	1 266	1 708	2 857	1 142	2 244	2 262	932	758	990	1 026	622	922	294	8
Less than $1,000	53	24	101	66	43	74	42	67	63	39	49	33	80	11	
$1,000 to $1,999	44	14	52	66	39	89	87	44	48	70	143	49	64	15	
$2,000 to $2,999	47	38	74	92	42	97	69	29	67	66	113	43	45	21	
$3,000 to $3,999	41	13	87	95	63	112	98	76	48	62	82	69	84	16	10
$4,000 to $4,999	74	55	113	96	104	113	100	54	36	78	123	49	53	11	12
$5,000 to $5,999	120	76	177	162	75	191	114	67	45	83	33	73	79	26	10
$6,000 to $6,999	158	119	190	200	83	235	155	55	58	82	67	20	75	20	
$7,000 to $7,999	99	119	134	150	99	252	209	69	48	90	84	51	78	10	
$8,000 to $8,999	174	122	181	185	139	120	212	56	47	107	72	70	99	33	
$9,000 to $9,999	189	131	106	210	125	159	188	55	24	112	58	55	52	12	
$10,000 to $11,999	243	251	217	267	107	234	372	152	82	99	83	50	113	49	
$12,000 to $14,999	309	204	163	281	127	281	285	124	71	50	72	60	38	54	
$15,000 to $24,999	190	90	98	166	82	255	242	74	93	43	47	–	61	16	
$25,000 to $49,999	22	10	15	21	14	17	71	5	23	9	–	–	11	–	
$50,000 or more	9	–	–	–	–	15	18	5	5	–	–	–	–	–	
Median income	$9 402	$9 405	$7 448	$8 549	$8 165	$7 837	$9 239	$8 089	$7 292	$7 167	$5 091	$5 932	$6 813	$8 515	$5 41
Mean income	$10 084	$9 604	$7 877	$8 739	$8 532	$9 245	$10 589	$8 663	$9 479	$7 235	$6 267	$6 383	$7 257	$8 128	$6 22
Families and unrelated individuals	1 919	1 311	1 955	2 338	1 344	3 798	2 864	1 084	862	1 177	1 290	712	1 101	317	2 49
Median income	$9 176	$9 332	$6 885	$7 994	$7 448	$5 088	$7 828	$7 162	$6 534	$6 302	$4 321	$5 315	$5 753	$8 167	$2 67
Mean income	$9 715	$9 468	$7 392	$8 152	$8 019	$6 473	$8 718	$7 782	$8 631	$6 509	$5 539	$5 758	$6 464	$7 743	$3 77
Unrelated individuals	147	45	247	281	202	1 554	602	152	104	187	264	90	169	23	1 64
Median income	$5 528	$5 250	$3 425	$2 887	$2 500	$1 766	$989	$1 125	$1 629	$1 578	$996	$1 257	$1 500	...	$1 93
Mean income	$5 268	$5 637	$4 038	$3 852	$5 119	$2 471	$1 689	$2 380	$2 457	$2 668	$2 710	$1 436	$2 091	...	$2 53

Census Tracts	[illegible] of Escambia County—Con.										Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
TYPE OF INCOME IN 1969 OF FAMILIES															
All families	1 772	1 266	1 708	2 057	1 142	2 244	2 262	932	758	990	1 026	622	932	294	845
With wage or salary income	1 576	1 217	1 558	1 879	1 043	1 995	2 037	834	598	808	832	497	658	248	775
Mean wage or salary income	$9 404	$9 255	$7 864	$8 596	$8 033	$8 808	$10 137	$8 120	$8 205	$7 383	$6 230	$6 553	$7 021	$8 005	$5 947
With nonfarm self-employment income	179	57	146	115	72	246	185	58	77	66	46	53	102	15	38
Mean nonfarm self-employment income	$5 986	$4 285	$3 880	$5 345	$7 963	$4 759	$9 119	$3 708	$4 440	$2 485	$3 028	$3 493	$6 006	...	$2 704
With farm self-employment income	21	6	4	28	18	26	51	–	124	123	26	71	157	33	99
Mean farm self-employment income	...	..	...	$1 029	...	$315	$574	–	$6 009	$2 100	$4 088	$1 588	$6 260	$3 929	$2 584
With Social Security income	148	83	170	184	159	325	342	89	168	195	313	145	204	62	58
Mean Social Security income	$1 363	$1 903	$1 207	$1 524	$1 888	$1 638	$1 477	$1 554	$1 121	$1 489	$1 288	$1 456	$1 133	$1 296	$994
With public assistance or public welfare income	30	33	94	79	73	114	98	92	61	109	245	63	67	15	30
Mean public assistance or public welfare income	$807	$162	$924	$790	$819	$732	$703	$1 368	$806	$888	$904	$759	$987	...	$708
With other income	713	393	281	644	270	635	686	280	174	270	175	113	172	64	242
Mean other income	$2 427	$1 265	$1 221	$1 304	$1 242	$2 174	$1 478	$2 936	$5 482	$1 436	$1 625	$1 387	$1 458	$1 386	$899
RATIO OF FAMILY INCOME TO POVERTY LEVEL[1]															
Percent of families with incomes															
Less than .50 of poverty level	3.6	2.6	9.4	5.6	6.1	5.3	2.3	12.9	12.1	8.5	13.1	7.1	11.7	5.1	3.3
.50 to .74	3.1	1.3	3.3	1.0	2.9	2.9	4.0	2.9	5.7	4.3	9.5	6.4	5.9	7.5	6.9
.75 to .99	2.4	1.3	3.8	3.7	2.9	3.3	4.1	6.7	5.5	4.4	12.3	7.2	3.2	1.7	10.4
1.00 to 1.24	2.9	5.5	9.9	5.0	7.1	6.1	2.5	3.4	5.3	4.5	9.2	9.8	9.4	5.1	8.8
1.25 to 1.49	4.0	4.4	8.4	7.4	7.2	8.1	3.5	6.5	6.3	8.5	4.2	6.4	7.8	3.7	15.9
1.50 to 1.99	13.4	16.7	13.5	15.8	14.1	17.1	13.5	13.8	11.6	18.6	12.7	14.1	10.2	18.4	17.8
2.00 to 2.99	27.5	31.6	22.7	27.4	24.8	23.0	30.9	22.4	15.8	27.1	21.7	29.7	27.5	21.1	16.0
3.00 or more	43.2	36.5	28.9	34.2	34.9	34.4	39.2	31.3	37.6	24.0	17.4	19.1	24.2	37.4	21.1
INCOME BELOW POVERTY LEVEL[1]															
Families	160	66	283	213	136	256	235	209	177	171	357	129	194	42	174
Percent of all families	9.0	5.2	16.6	10.4	11.9	11.4	10.4	22.4	23.4	17.3	34.8	20.7	20.8	14.3	20.6
Mean family income	$1 556	$1 752	$1 956	$1 716	$2 085	$1 722	$2 131	$2 039	$1 680	$1 699	$2 092	$1 683	$1 155	$1 333	$2 150
Mean income deficit	$1 851	$1 955	$2 307	$1 585	$1 868	$1 612	$1 199	$2 478	$1 793	$1 911	$1 542	$1 342	$2 020	$1 252	$1 138
Percent receiving public assistance income	6.3	6.1	18.0	5.2	22.1	29.7	28.5	25.8	23.7	46.8	54.9	36.4	25.8	23.8	5.7
Mean size of family	3.54	4.02	4.91	3.42	4.43	3.47	3.54	5.24	3.90	4.18	4.07	3.26	3.68	2.67	3.53
With related children under 18 years	105	66	254	150	89	160	131	183	101	120	215	61	120	16	111
Mean number of related children under 18 years	2.58	2.35	3.35	2.26	3.47	2.59	2.71	3.76	3.42	3.19	3.45	2.74	2.70	...	2.32
With related children under 6 years	50	50	118	87	37	80	75	141	47	69	102	42	41	5	80
Mean number of related children under 6 years	1.18	1.64	1.98	1.30	2.16	1.49	1.45	2.02	1.98	1.72	1.91	1.71	1.73	...	1.53

Census Tracts

	Escambia County—Con.										Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tr 01
Families with female head	69	22	109	84	45	103	43	83	56	47	150	37	48	4	
With related children under 18 years	57	22	103	75	31	78	43	76	35	35	119	22	37	–	
Mean number of related children under 18 years	2.68	...	3.35	1.63	3.13	2.91	2.44	4.05	2.83	3.31	3.34	...	2.54	–	.
With related children under 6 years	26	11	56	17	4	44	18	62	14	22	59	17	11	–	
Percent in labor force	61.5	...	41.1	...	...	72.7	–	25.8	–	–	33.9	–	–	–	
Mean number of related children under 6 years	1.00	...	1.73	...	...	1.57	...	1.73	...	...	2.20	...	...	–	
Family heads	**160**	**66**	**283**	**213**	**136**	**256**	**235**	**209**	**177**	**171**	**357**	**129**	**194**	**42**	**17**
Percent 65 years and over	12.5	–	12.7	7.5	22.1	11.7	24.7	5.7	35.6	24.6	31.1	46.5	24.7	33.3	13.
Civilian male heads under 65 years	56	28	150	71	75	107	131	123	79	88	127	47	110	28	2
Percent in labor force	39.3	75.0	74.7	38.0	57.3	72.9	51.9	87.8	62.0	87.5	53.5	66.0	61.8	39.3	..
Unrelated individuals	**34**	**16**	**80**	**108**	**76**	**162**	**152**	**97**	**60**	**107**	**187**	**66**	**102**	**11**	**3**
Percent of all unrelated individuals	23.1	35.6	32.4	38.4	37.6	50.2	58.5	63.8	57.7	57.2	70.8	73.3	60.4	...	48.
Mean income	$476	...	$517	$968	$518	$733	$664	$772	$943	$854	$834	$808	$875	...	$67
Mean income deficit	$1 306	...	$1 361	$851	$1 311	$1 117	$1 139	$1 033	$767	$861	$963	$940	$900	...	$1 14
Percent receiving public assistance income	35.3	–	25.0	8.3	6.6	26.5	25.7	29.9	21.7	49.5	48.7	25.8	43.1	–	17.
Percent 65 years and over	64.7	–	13.8	60.2	39.5	37.0	40.8	54.6	60.0	51.4	68.4	57.6	63.7	...	33.
Persons	**600**	**281**	**1 470**	**837**	**679**	**1 050**	**984**	**1 192**	**751**	**822**	**1 639**	**487**	**815**	**123**	**65**
Percent of all persons	9.1	5.8	20.0	10.7	15.5	11.9	11.3	28.5	26.1	22.1	38.3	21.5	24.5	11.3	22.
Percent receiving Social Security income	7.2	–	5.9	14.5	11.5	9.4	14.8	6.1	18.0	15.0	21.8	23.8	18.4	19.5	6.
Percent 65 years and over	8.5	–	4.6	12.2	10.9	10.8	17.2	5.5	15.7	13.9	18.7	27.5	18.0	26.8	7.
Percent receiving Social Security income	41.2	–	55.2	84.3	40.5	38.9	59.2	50.8	72.9	55.3	68.0	67.2	53.1	39.4	53.
Related children under 18 years	272	158	871	337	313	435	363	673	327	335	807	166	305	28	255
Percent living with both parents	43.4	61.4	52.2	65.6	59.7	45.3	65.0	53.8	70.3	58.5	35.6	74.1	64.6	85.7	81.2
Households	**179**	**60**	**291**	**207**	**161**	**323**	**258**	**267**	**167**	**201**	**458**	**73**	**132**	**17**	**148**
Percent of all households	9.7	4.8	17.5	11.2	15.3	14.3	14.1	28.0	34.6	27.5	45.7	22.5	22.0	11.1	21.3
Owner occupied	128	25	173	147	132	230	154	192	129	121	299	46	98	17	13
Mean value of unit	$11 500	$12 800	$8 400	$11 400	$9 600	$10 500	$12 200	$6 700	$6 200	$5 700	$7 100	$4 400	$5 400	...	...
Renter occupied	51	35	118	60	29	93	104	75	38	80	159	27	34	–	135
Mean gross rent	$86	$175	$62	$103	$91	$78	$79	$40	$43	$48	$40	$28	$39	–	$57
Percent lacking some or all plumbing facilities	12.8	–	38.8	3.9	8.7	27.6	20.5	52.4	35.9	39.8	54.8	27.4	22.6	..	2.6

Excludes inmates of institutions, members of the Armed Forces living in barracks, college students in dormitories, and unrelated individuals under 14 years.

Table P-4. Income Characteristics of the Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Santa Rosa County—Con.					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	
INCOME IN 1969 OF FAMILIES AND UNRELATED INDIVIDUALS															
All families	898	1 741	1 863	1 359	1 887	1 341	2 145	1 686	1 712	741	788	1 274	877	1 986	2
Less than $1,000	32	95	60	40	10	128	28	14	52	59	34	56	8	50	
$1,000 to $1,999	33	85	139	58	15	191	8	14	106	51	73	78	22	57	
$2,000 to $2,999	26	101	86	110	18	153	15	63	115	74	58	107	41	107	
$3,000 to $3,999	54	99	150	74	30	136	43	78	68	71	107	110	90	118	
$4,000 to $4,999	75	112	123	106	39	161	76	78	124	112	56	139	74	176	
$5,000 to $5,999	84	125	114	119	9	134	40	132	129	64	99	101	89	214	
$6,000 to $6,999	48	165	202	124	60	155	94	124	158	71	88	100	60	182	
$7,000 to $7,999	73	169	132	98	52	56	104	108	112	53	66	126	110	176	
$8,000 to $8,999	54	161	198	66	57	85	158	125	177	64	40	44	60	141	
$9,000 to $9,999	55	115	145	100	53	34	181	149	151	25	24	110	101	173	
$10,000 to $11,999	119	191	160	149	146	39	381	293	160	36	25	116	88	178	
$12,000 to $14,999	113	144	204	171	173	34	578	249	169	39	20	122	75	160	
$15,000 to $24,999	121	158	140	121	316	17	380	166	153	12	15	55	39	182	
$25,000 to $49,999	11	16	5	17	85	18	49	52	34	-	-	10	-	14	
$50,000 or more	-	5	5	6	24	-	10	5	4	10	3	-	-	8	
Median income	$8 444	$7 524	$7 436	$7 495	$12 945	$4 388	$11 709	$9 597	$7 929	$5 055	$5 263	$6 460	$7 314	$7 364	$7
Mean income	$9 261	$8 074	$8 003	$8 538	$14 594	$5 225	$11 981	$10 322	$10 267	$6 741	$8 691	$7 132	$7 558	$8 345	$9
Families and unrelated individuals	991	2 091	2 230	1 628	1 241	1 891	2 324	2 296	2 016	1 029	923	1 662	1 159	2 419	3
Median income	$7 719	$6 832	$6 588	$6 615	$12 404	$3 378	$11 352	$7 845	$6 898	$4 061	$4 211	$5 289	$5 842	$6 513	$5
Mean income	$8 655	$7 246	$7 164	$7 535	$13 947	$4 294	$11 449	$8 406	$9 168	$5 290	$7 234	$6 167	$6 343	$7 593	$6
Unrelated individuals	93	350	367	269	154	550	179	646	304	288	215	388	282	483	1
Median income	$1 771	$2 186	$2 287	$1 205	$5 000	$1 438	$3 729	$2 531	$1 928	$1 083	$1 793	$1 748	$1 827	$3 430	$1
Mean income	$2 802	$3 128	$2 906	$2 464	$9 381	$2 025	$5 074	$3 513	$2 977	$1 559	$2 435	$2 997	$2 564	$4 581	$2

ensus Tracts	Santa Rosa County — Con.					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	T
TYPE OF INCOME IN 1969 OF FAMILIES															
All families	898	1 741	1 863	1 359	1 087	1 841	2 145	1 650	1 712	741	788	1 274	877	1 936	2
With wage or salary income	852	1 595	1 594	1 151	1 012	1 131	2 075	1 531	1 536	649	653	1 091	755	1 734	2
Mean wage or salary income	$8 850	$7 626	$7 646	$8 068	$13 200	$4 985	$11 199	$9 365	$8 260	$5 373	$5 129	$6 880	$7 087	$7 862	$8
With nonfarm self-employment income	79	122	134	128	121	107	199	122	112	37	35	114	120	188	
Mean nonfarm self-employment income	$3 721	$5 312	$7 678	$7 938	$6 219	$5 584	$3 653	$6 262	$4 704	$5 631	$4 373	$2 812	$4 855	$5 036	$4
With farm self-employment income	18	11	47	27	–	–	14	30	5	5	5	–	9	4	
Mean farm self-employment income	...	...	$850	$1 746	–	–	...	$490	...	...	...	–	...	...	$
With Social Security income	77	215	324	228	136	231	171	262	251	161	123	298	173	270	
Mean Social Security income	$1 [illegible]	$1 375	$1 255	$1 593	$1 825	$1 215	$1 659	$1 748	$1 425	$1 227	$1 272	$1 509	$1 356	$1 547	$1
With public assistance or public welfare income	22	132	[illegible]	69	–	260	21	56	134	111	109	208	61	61	
Mean public assistance or public welfare income	...	$954	$881	$1 119	–	$697	...	$790	$991	$590	$598	$623	$702	$875	$
With other income	199	463	599	357	479	242	942	577	496	111	85	375	301	669	
Mean other income	$1 510	$1 771	$1 836	$2 278	$3 140	$1 279	$1 537	$2 449	$7 776	$9 333	$28 461	$1 814	$1 395	$1 649	$2
RATIO OF FAMILY INCOME TO POVERTY LEVEL[1]															
Percent of families with incomes															
Less than .50 of poverty level	5.0	8.3	4.8	5.2	1.4	20.1	1.7	1.5	7.1	11.7	13.0	6.4	1.5	3.9	
.50 to .74	3.7	5.0	6.2	6.0	1.6	9.7	–	1.2	5.4	13.9	10.2	6.0	2.5	3.6	
.75 to .99	3.9	5.0	6.9	4.6	2.7	10.8	1.4	4.2	5.8	10.5	7.5	9.9	8.2	5.2	
1.00 to 1.24	8.5	4.7	4.6	9.5	1.7	12.4	2.7	2.3	3.7	9.6	15.4	8.4	5.9	4.3	
1.25 to 1.49	7.2	6.4	7.7	5.4	1.5	9.6	2.7	3.8	8.5	9.9	16.4	8.2	4.1	7.3	
1.50 to 1.99	12.9	13.7	14.8	14.8	6.4	16.3	5.5	11.0	13.3	14.6	13.4	13.0	22.2	16.1	1
2.00 to 2.99	25.3	27.5	29.2	23.3	22.8	11.0	28.0	30.3	24.6	19.3	16.0	19.2	21.4	28.0	2
3.00 or more	33.5	29.6	25.9	31.1	61.9	10.1	58.0	45.8	31.5	10.5	8.2	29.0	34.1	31.6	3
INCOME BELOW POVERTY LEVEL[1]															
[illegible]	113	318	332	215	61	345	66	112	314	268	217	284	107	246	
Percent of all families	12.6	18.3	17.8	15.8	5.6	40.6	3.1	6.8	18.3	36.2	30.6	22.3	12.2	12.7	1
Mean family income	$2 307	$1 865	$1 955	$2 093	$2 542	$1 924	$1 852	$2 371	$2 073	$2 488	$2 411	$2 121	$2 203	$2 066	$1
Mean income deficit	$1 580	$1 834	$1 306	$1 461	$1 277	$1 972	$1 940	$1 024	$1 540	$1 651	$1 852	$1 172	$910	$1 253	$1
Percent receiving public assistance income	3.5	27.7	23.8	16.3	–	33.0	10.6	17.0	32.5	19.8	34.6	45.8	21.5	8.5	2
Mean size of family	4.51	4.13	3.35	3.80	4.15	4.30	4.23	3.59	3.95	4.81	5.21	3.51	3.23	3.37	3
With related children under 18 years	87	238	193	142	46	437	61	82	235	213	166	166	48	137	
Mean number of related children under 18 years	3.66	3.20	2.46	2.65	2.87	2.97	2.79	2.29	2.80	3.31	4.29	2.63	2.65	2.77	2
With related children under 6 years	54	141	103	63	14	183	32	44	149	92	98	68	21	55	
Mean number of related children under 6 years	1.98	1.61	1.54	1.60	...	1.45	2.22	1.27	1.47	1.82	2.31	1.88	...	1.27	1

Census Tracts	Santa Rosa County – Con.					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
Families with female head	32	144	99	48	14	337	38	34	148	103	97	89	39	68	103
With related children under 18 years	32	129	88	48	14	309	38	34	138	85	75	61	21	51	78
Mean number of related children under 18 years	3.16	3.93	2.41	2.15	...	2.86	2.92	2.44	3.02	2.72	3.80	1.59	...	2.22	2.91
With related children under 6 years	15	63	15	13	5	123	20	22	95	15	32	12	3	–	44
Percent in labor force	–	69.8	...	...	–	69.9	...	–	61.1	...	65.6	...	...	–	72.7
Mean number of related children under 6 years	...	1.65	...	...	...	1.50	...	...	1.49	...	2.50	...	...	–	1.57
[illegible] heads[1]	113	318	332	215	61	545	66	112	314	268	217	284	107	244	256
Percent 65 years and over	4.4	16.0	20.8	17.7	6.6	20.0	–	25.9	16.2	17.5	6.0	21.5	44.9	17.1	11.7
Civilian male heads under 65 years	62	87	140	129	42	140	28	43	109	125	110	141	38	88	107
Percent in labor force	90.3	89.7	66.4	57.4	76.2	67.9	82.1	86.0	74.3	67.2	70.0	51.1	73.7	69.3	72.9
[illegible] individuals	52	148	153	170	23	345	33	169	128	214	108	207	145	158	168
Percent of all unrelated individuals	55.9	42.3	41.7	63.2	14.9	62.7	18.4	32.3	42.1	74.3	50.2	53.4	51.4	32.7	51.1
Mean income	$788	$819	$929	$667	...	$784	$239	$873	$775	$723	$788	$860	$755	$809	$734
Mean income deficit	$1 012	$1 002	$881	$1 117	...	$1 067	$1 329	$953	$1 051	$1 144	$1 032	$957	$1 062	$988	$1 115
Percent receiving public assistance income	34.6	12.2	41.2	28.2	–	22.3	30.3	11.2	12.5	22.0	14.8	25.6	13.8	10.8	25.6
Percent 65 years and over	53.8	31.8	62.1	35.9	...	33.9	42.4	42.0	33.6	22.4	48.1	41.5	50.3	57.0	35.7
[illegible]	562	1 462	1 266	987	276	2 686	312	571	1 367	1 503	1 239	1 283	491	987	1 056
Percent of all persons	15.7	22.7	17.9	18.8	6.6	45.9	3.8	9.6	20.5	42.8	38.7	25.6	16.0	14.6	11.7
Percent receiving Social Security income	6.9	9.7	13.7	17.4	4.0	7.7	2.6	23.5	11.4	11.4	8.6	22.4	36.3	15.3	9.4
Percent 65 years and over	5.9	7.7	16.9	15.1	4.0	10.2	4.5	18.4	10.7	10.2	5.8	16.9	30.8	15.0	10.7
Percent receiving Social Security income	75.8	61.1	54.7	69.1	...	54.7	...	72.4	47.3	61.0	68.1	74.4	86.1	64.2	38.9
Related children under 18 years	274	578	505	375	133	1 254	170	198	702	751	621	462	144	377	435
Percent living with both parents	54.4	30.4	49.9	57.9	79.7	27.5	37.6	57.6	29.6	51.9	44.8	64.9	77.8	71.6	45.3
[illegible]	114	358	388	270	70	706	76	175	353	512	290	432	204	344	329
Percent of all households	14.1	19.7	23.1	20.8	6.1	44.9	3.4	9.8	20.9	44.4	35.0	29.1	20.1	15.9	14.2
Owner occupied	66	192	233	191	22	297	51	107	202	235	148	248	144	180	230
Mean value of unit	$6 200	$7 900	$7 000	$9 500	...	$9 800	$11 900	$15 000	$10 100	$9 100	$9 300	$6 600	$7 000	$9 000	$10 500
Renter occupied	48	166	155	79	48	409	25	68	151	177	142	184	60	164	99
Mean gross rent	$82	$77	$61	$66	$170	$59	$166	$115	$56	$58	$63	$70	$84	$93	$88
Percent lacking some or all plumbing facilities	15.8	24.0	26.8	27.4	–	21.7	27.6	2.3	17.0	43.4	48.3	17.6	2.5	1.5	27.1

[1]Excludes inmates of institutions, members of the Armed Forces living in barracks, college students in dormitories, and unrelated individuals under 14 years

Table P-5. General and Social Characteristics of the Negro Population: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Negro Population	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014	Tract 00
AGE BY SEX															
Male, all ages	19 979	19 095	8 952	10 143	884	925	258	2 399	373	2 213	789	597	252	386	7
Under 5 years	2 235	2 174	961	1 213	61	95	17	270	39	183	105	78	31	96	
3 and 4 years	891	851	410	441	40	20	2	124	24	78	42	43	5	40	
5 to 9 years	2 909	2 776	1 239	1 537	133	77	32	401	53	219	176	78	35	75	
5 years	453	425	179	246	28	-	15	60	11	22	23	5	17	9	
6 years	627	611	245	366	16	14	-	79	7	48	29	21	5	20	
10 to 14 years	3 130	2 933	1 315	1 618	197	216	47	324	49	353	89	51	30	30	1
14 years	633	599	280	319	34	58	8	61	18	83	12	7	4	7	
15 to 19 years	2 467	2 381	1 027	1 354	86	79	28	312	43	270	74	87	51	38	
15 years	506	479	210	269	27	3	11	58	18	50	17	14	13	23	
16 years	639	618	264	354	21	42	11	73	-	97	23	-	8	-	
17 years	468	460	188	272	8	11	-	77	13	45	11	14	6	-	
18 years	443	422	218	204	21	18	6	64	12	50	13	22	3	15	
19 years	411	402	147	255	9	5	-	40	-	28	10	37	21	-	
20 to 24 years	1 318	[illegible]	474	749	95	30	15	128	6	100	60	42	11	15	
20 years	431	369	119	250	62	12	-	40	-	20	17	15	-	5	
21 years	215	206	67	139	9	-	-	20	-	17	17	-	-	-	
25 to 34 years	1 866	1 760	841	919	106	59	20	263	43	213	52	49	27	27	
35 to 44 years	1 859	1 805	826	979	54	122	28	169	48	170	77	69	30	13	
45 to 54 years	1 806	1 728	974	754	78	108	41	253	34	285	69	53	25	-	
55 to 59 years	693	693	374	319	-	30	3	105	5	112	20	49	8	-	
60 to 64 years	637	615	332	283	22	30	17	47	25	118	20	19	-	5	
65 to 74 years	722	687	426	261	35	70	10	75	12	135	42	14	4	7	
75 years and over	337	320	163	157	17	9	-	52	16	55	5	8	-	-	
Female, all ages	22 330	21 249	10 722	10 527	1 081	1 050	325	2 938	457	2 638	924	694	298	484	7
Under 5 years	2 224	2 102	894	1 208	122	46	24	269	22	250	90	60	25	45	
3 and 4 years	892	835	371	464	57	-	6	79	10	151	44	26	20	24	
5 to 9 years	2 779	2 605	1 285	1 320	174	137	32	389	43	252	96	78	49	130	
5 years	396	363	161	202	33	8	5	63	8	19	10	10	6	21	
6 years	598	554	281	273	44	19	-	81	9	56	22	15	7	42	
10 to 14 years	3 011	2 926	1 232	1 694	85	130	53	299	68	302	151	54	40	25	
14 years	600	582	212	370	18	25	3	32	5	75	17	10	6	6	
15 to 19 years	2 425	2 252	1 047	1 205	173	90	24	312	57	221	86	79	28	55	
15 years	579	538	258	280	41	24	8	70	26	39	20	25	3	20	
16 years	555	514	192	322	41	8	-	46	-	58	16	15	6	18	

Census Tracts With 400 or More Negro Population

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014	Tract 0015
17 years	471	435	234	201	36	16	–	99	12	50	6	20	7	13	11
18 years	411	384	176	208	27	18	12	33	13	47	22	9	3	–	19
19 years	409	381	187	194	28	24	4	64	6	27	22	10	9	4	11
20 to 24 years	1 511	1 456	766	690	55	65	21	251	17	129	119	37	14	44	51
20 years	367	359	210	149	8	30	5	67	–	22	45	–	6	19	11
21 years	343	330	157	173	13	9	–	60	7	34	10	15	6	4	12
25 to 34 years	2 358	2 237	1 189	1 048	121	103	36	363	35	248	112	94	30	66	83
35 to 44 years	2 605	2 499	1 221	1 278	106	117	56	277	65	304	89	80	63	58	75
45 to 54 years	2 109	1 992	1 082	910	117	117	24	299	51	276	71	89	33	19	76
55 to 59 years	975	945	611	334	30	56	4	135	26	227	35	42	4	13	63
60 to 64 years	743	711	416	295	32	59	9	113	20	118	32	17	5	10	33
65 to 74 years	1 101	1 049	686	363	52	85	30	188	33	211	33	28	7	3	56
75 years and over	489	475	293	182	14	45	12	43	20	100	10	36	–	16	11
		1 505													
RELATIONSHIP TO HEAD OF HOUSEHOLD															
All persons	**42 309**	**40 344**	**19 674**	**20 670**	**1 965**	**1 975**	**583**	**5 337**	**830**	**4 851**	**1 713**	**1 291**	**550**	**790**	**1 451**
In households	41 613	39 709	19 634	20 075	1 904	1 975	583	5 337	830	4 851	1 713	1 291	550	790	1 451
Head of household	11 074	10 520	5 694	4 826	554	587	162	1 514	228	1 550	455	375	129	176	426
Head of family	8 915	8 506	4 386	4 120	409	410	134	1 230	188	1 074	385	309	115	170	304
Primary individual	2 159	2 014	1 308	706	145	177	28	284	40	476	70	66	14	6	122
Wife of head	5 574	5 371	2 555	2 816	203	255	100	691	99	591	196	209	79	57	213
Other relative of head	24 208	23 095	10 918	12 177	1 113	1 099	292	3 039	462	2 576	1 009	689	338	557	771
Not related to head	757	723	467	256	34	34	29	93	41	134	53	18	4	–	41
In group quarters	696	635	40	595	61	–	–	–	–	–	–	–	–	–	–
Persons per household	3.76	3.77	3.45	4.16	3.44	3.36	3.60	3.53	3.64	3.13	3.76	3.44	4.26	4.49	3.41
TYPE OF HOUSEHOLD															
All households	**11 074**	**10 520**	**5 694**	**4 826**	**554**	**587**	**162**	**1 514**	**228**	**1 550**	**455**	**375**	**129**	**176**	**426**
Male primary individual	844	790	490	300	54	78	17	98	6	188	17	19	–	–	60
Female primary individual	1 315	1 224	818	406	91	99	11	186	34	288	53	47	14	6	62
Husband-wife households	5 558	5 347	2 524	2 823	211	239	74	680	101	606	235	215	61	50	196
Households with other male head	461	442	234	208	19	14	3	74	15	70	3	12	3	5	35
Households with female head	2 896	2 717	1 628	1 089	179	157	57	476	72	398	147	82	51	115	73
SCHOOL ENROLLMENT															
Persons, 16 to 21 years old	**5 163**	**4 880**	**2 159**	**2 721**	**283**	**193**	**38**	**683**	**63**	**495**	**212**	**157**	**75**	**78**	**137**
Not attending school	2 627	2 480	1 116	1 364	147	128	21	388	13	206	150	49	19	58	73
Not high school graduates	1 259	1 208	560	648	51	82	5	214	3	92	52	15	–	34	57
Percent of total	24.4	24.8	25.9	23.8	18.0	42.5	13.2	31.3	4.8	18.6	24.5	9.6	–	43.6	41.6

Census Tracts With 400 or More Negro Population

	Total SMSA	Escambia County			Santa Rosa County	Pensacola								
		Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014
YEARS OF SCHOOL COMPLETED														
Persons, 25 years old and over	18 300	17 516	9 434	8 082	784	1 010	290	2 382	433	2 572	667	647	234	237
No school years completed	917	907	362	545	10	65	–	75	13	118	25	29	4	6
Elementary 1 to 4 years	2 675	2 552	1 330	1 222	123	120	50	308	44	428	94	47	9	23
5 to 7 years	3 453	3 299	1 764	1 535	154	190	57	416	42	536	110	72	85	48
8 years	1 774	1 719	999	720	55	126	22	280	35	199	126	61	25	20
High school 1 to 3 years	4 410	4 168	2 192	1 976	242	170	89	569	101	644	160	183	38	59
4 years	3 495	3 374	1 897	1 477	121	240	46	512	68	511	109	115	53	64
College 1 to 3 years	942	902	474	428	40	45	18	145	39	71	34	53	12	12
4 years or more	634	595	416	179	39	54	8	77	71	65	9	87	10	5
Median school years completed	9.2	9.2	9.4	9.0	9.6	9.1	9.5	9.6	10.9	9.0	8.8	10.9	8.8	10.1
Percent high school graduates	27.7	27.8	29.5	25.8	25.5	33.6	24.8	30.8	41.1	25.2	22.8	39.4	31.8	34.2
RESIDENCE IN 1965														
Persons, 5 years old and over, 1970[1]	37 843	36 041	17 781	18 260	1 802	1 822	548	4 799	750	4 411	1 519	1 136	502	600
Same house as in 1970	21 967	21 012	9 923	11 089	955	1 049	455	2 872	466	2 291	826	631	287	136
Different house:														
In central city of this SMSA	7 099	7 099	4 989	2 110	–	556	–	1 237	184	1 299	538	335	162	230
In other part of this SMSA	4 004	3 472	715	2 757	532	64	16	42	–	222	28	68	30	154
Outside this SMSA	2 400	2 172	905	1 267	228	51	53	301	67	177	58	42	6	80
North and West	635	587	235	352	48	40	5	39	35	43	17	25	3	17
South	1 765	1 585	670	915	180	11	48	262	32	134	41	17	3	38
Abroad	159	141	50	91	18	6	3	19	–	10	–	–	–	7

[1] Includes "Moved, 1965 residence not reported."

Table P-5. General and Social Characteristics of the Negro Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Negro Population	Balance of Escambia County														
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040
AGE BY SEX															
Male, all ages	363	798	1 344	885	190	539	471	1 765	282	584	172	811	223	208	684
Under 5 years	46	74	133	163	28	36	29	225	35	72	11	124	27	49	96
3 and 4 years	-	10	44	71	13	5	7	72	27	44	7	71	12	13	30
5 to 9 years	53	71	172	157	21	117	94	318	68	90	6	141	37	8	131
5 years	9	11	34	32	7	27	14	20	6	17	-	22	8	-	24
6 years	5	16	26	47	5	27	25	71	11	22	-	38	-	-	42
10 to 14 years	71	120	264	182	18	65	54	327	82	62	55	145	42	14	64
14 years	28	34	47	34	-	4	5	40	11	16	31	43	12	-	6
15 to 19 years	44	114	133	105	30	75	73	220	12	98	52	134	33	14	97
15 years	-	22	21	35	5	6	13	56	-	36	4	35	7	7	7
16 years	29	26	48	27	5	23	17	60	4	44	8	27	13	-	15
17 years	-	7	29	23	5	11	12	58	8	11	11	27	13	7	40
18 years	7	39	10	5	4	10	19	26	-	-	6	16	-	-	18
19 years	8	20	25	15	11	25	12	20	-	7	23	29	-	-	17
20 to 24 years	22	40	84	43	21	47	8	25	7	54	-	36	20	30	29
20 years	5	27	19	11	-	4	-	-	4	22	-	5	-	11	5
21 years	-	-	17	4	5	-	-	8	-	19	-	13	7	-	6
25 to 34 years	11	63	134	87	5	46	44	206	38	50	4	56	17	4	48
35 to 44 years	56	99	132	59	25	65	50	233	19	32	18	73	16	17	47
45 to 54 years	31	83	95	27	26	36	61	126	21	41	20	45	18	51	44
55 to 59 years	14	59	55	20	-	13	7	33	-	23	6	26	-	13	33
60 to 64 years	13	41	62	20	6	26	22	14	-	28	-	14	10	-	14
65 to 74 years	-	27	61	15	-	13	7	29	-	27	-	5	3	8	32
75 years and over	4	7	19	7	10	-	22	9	-	7	-	12	-	-	49
Female, all ages	344	1 149	1 452	970	227	617	483	1 681	215	550	166	761	235	239	898
Under 5 years	40	123	144	166	14	44	49	172	40	50	9	116	47	19	105
3 and 4 years	5	33	65	68	-	20	30	69	9	11	4	56	12	9	43
5 to 9 years	18	139	203	118	50	77	53	246	40	64	25	116	25	6	81
5 years	-	27	49	13	13	6	-	29	6	5	5	16	10	-	7
6 years	-	11	39	41	11	13	16	45	7	13	-	55	-	6	16
10 to 14 years	73	227	225	160	48	109	58	273	16	90	18	86	39	45	182
14 years	17	43	66	30	14	15	5	67	4	18	7	9	24	12	34
15 to 19 years	43	142	194	106	10	59	53	214	15	73	22	109	17	29	72
15 years	-	33	50	30	-	10	6	54	-	15	5	28	7	6	21
16 years	10	45	51	24	5	17	23	58	11	6	6	36	-	13	17

Census Tracts With 400 or More Negro Population

	Balance of Escambia County														
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040
17 years	13	21	38	28	5	10	–	40	–	21	–	8	–	6	11
18 years	16	20	32	20	–	6	6	29	4	23	11	33	–	–	6
19 years	4	23	23	4	–	16	18	33	–	8	–	4	10	4	17
20 to 24 years	20	35	49	108	14	43	20	78	21	30	15	51	14	38	63
20 years	5	–	21	41	5	15	–	9	10	12	5	9	–	6	–
21 years	11	10	15	21	–	13	15	15	–	6	–	8	–	16	23
25 to 34 years	27	83	129	109	27	82	37	231	34	50	19	64	23	11	45
35 to 44 years	57	148	194	128	23	65	66	236	36	59	15	81	19	29	69
45 to 54 years	46	104	128	50	25	53	47	124	9	76	20	72	18	43	64
55 to 59 years	–	55	50	6	–	28	21	30	–	13	11	19	6	9	69
60 to 64 years	11	39	70	15	11	15	23	18	4	–	4	8	15	–	36
65 to 74 years	4	39	47	–	5	13	43	39	–	35	–	34	7	10	63
75 years and over	5	15	19	4	–	29	13	20	–	10	8	5	5	–	41
RELATIONSHIP TO HEAD OF HOUSEHOLD															
All persons	**709**	**1 947**	**2 796**	**1 855**	**417**	**1 156**	**954**	**3 446**	**497**	**1 134**	**338**	**1 572**	**458**	**447**	**1 574**
In households	709	1 947	2 715	1 855	417	1 156	954	3 446	497	1 088	306	1 514	458	447	1 574
Head of household	171	484	682	401	117	263	258	756	90	274	55	317	99	128	440
Head of family	145	398	566	386	95	246	202	673	90	236	46	253	91	96	331
Primary individual	26	86	116	15	22	17	56	83	–	38	9	64	8	32	109
Wife of head	112	305	344	224	61	162	139	542	74	175	39	156	64	63	146
Other relative of head	412	1 127	1 650	1 215	239	726	532	2 067	327	637	212	1 041	295	250	964
Not related to head	14	31	39	15	–	5	25	81	6	2	–	–	–	6	24
In group quarters	–	–	81	–	–	–	–	–	–	46	32	58	–	–	–
Persons per household	4.15	4.02	3.98	4.63	3.56	4.40	3.70	4.56	5.52	3.97	5.56	4.78	4.63	3.49	3.58
TYPE OF HOUSEHOLD															
All households	**171**	**484**	**682**	**401**	**117**	**263**	**258**	**756**	**90**	**274**	**55**	**317**	**99**	**128**	**440**
Male primary individual	22	25	64	15	5	–	14	39	–	17	–	15	3	23	46
Female primary individual	4	61	52	–	17	17	42	44	–	21	9	49	5	9	63
Husband-wife households	109	310	359	230	65	158	135	513	69	174	38	161	58	83	161
Households with other male head	–	–	54	16	12	12	24	40	–	14	–	5	–	–	13
Households with female head	36	88	153	140	18	76	43	120	21	48	8	87	33	13	157
SCHOOL ENROLLMENT															
Persons, 16 to 21 years old	**108**	**238**	**328**	**223**	**45**	**150**	**122**	**356**	**41**	**179**	**70**	**215**	**43**	**63**	**175**
Not attending school	34	98	144	120	19	61	69	78	18	85	34	120	17	37	96
Not high school graduates	8	46	88	61	14	29	31	43	9	36	21	82	17	6	55
Percent of total	7.4	19.3	26.8	27.4	31.1	19.3	25.4	12.1	22.0	20.1	30.0	38.1	39.5	9.5	31.4

Census Tracts With 400 or More Negro Population

	Balance of Escambia County														
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040
YEARS OF SCHOOL COMPLETED															
Persons, 25 years old and over	**279**	**862**	**1 195**	**547**	**163**	**484**	**463**	**1 348**	**161**	**451**	**125**	**514**	**157**	**195**	**654**
No school years completed	-	54	102	30	12	37	22	58	-	48	20	49	20	11	50
Elementary 1 to 4 years	22	136	209	41	20	54	42	150	11	141	33	109	18	32	137
5 to 7 years	71	151	223	122	30	85	108	196	24	70	33	96	58	46	149
8 years	17	144	96	51	4	47	33	86	10	44	11	58	17	39	42
High school 1 to 3 years	33	161	320	180	38	134	137	402	45	104	22	93	22	42	158
4 years	60	172	184	89	45	94	83	317	49	31	-	98	12	19	106
College 1 to 3 years	26	21	52	30	10	33	28	94	22	13	6	11	10	6	-
4 years or more	50	23	9	4	4	-	10	45	-	-	-	-	-	-	12
Median school years completed	11.7	8.6	8.7	9.5	10.2	9.4	9.6	10.4	11.4	6.2	6.6	8.1	7.0	8.2	7.6
Percent high school graduates	48.7	25.1	20.5	22.5	36.2	26.2	26.1	33.8	44.1	9.8	4.8	21.2	14.0	12.8	18.0
RESIDENCE IN 1965															
Persons, 5 years old and over, 1970	**607**	**1 796**	**2 501**	**1 642**	**228**	**1 086**	**905**	**3 066**	**389**	**1 040**	**342**	**1 302**	**375**	**400**	**1 352**
Same house as in 1970	385	1 405	1 626	604	120	758	575	1 979	171	586	221	828	302	259	869
Different house															
In central city of this SMSA	99	197	307	266	69	238	15	470	86	80	76	42	-	-	-
In other part of this SMSA	44	89	330	542	32	63	204	213	71	246	17	339	32	124	393
Outside this SMSA	43	96	145	5	7	13	35	268	35	55	14	51	-	9	32
North and West	11	32	14	-	-	-	7	27	-	28	-	21	-	-	-
South	32	64	131	5	7	13	28	241	35	27	14	30	-	9	32
Abroad	7	-	-	-	-	-	-	26	16	3	-	9	-	-	-

Includes "Moved, 1965 residence not reported"

Table P-5. General and Social Characteristics of the Negro Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Negro Population	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0035
AGE BY SEX							
Male, all ages	343	2 474	671	1 500	1 373	190	584
Under 5 years	20	270	142	118	133	28	72
3 and 4 years	12	124	40	39	44	13	44
5 to 9 years	88	401	128	157	172	21	90
5 years	17	60	18	28	34	7	17
6 years	7	79	25	38	26	5	22
10 to 14 years	92	339	101	230	264	18	62
14 years	16	65	35	56	47	-	16
15 to 19 years	13	330	82	150	139	30	98
15 years	-	65	23	25	21	5	36
16 years	2	81	29	36	48	5	44
17 years	8	77	-	18	29	5	11
18 years	-	67	22	48	16	4	-
19 years	3	40	8	23	25	11	7
20 to 24 years	13	128	37	91	84	21	54
20 years	2	40	10	37	19	-	22
21 years	-	20	-	13	17	5	19
25 to 34 years	47	271	38	142	134	5	50
35 to 44 years	41	169	69	173	136	25	32
45 to 54 years	26	263	31	164	107	26	41
55 to 59 years	-	116	14	94	55	-	23
60 to 64 years	-	47	18	80	69	6	28
65 to 74 years	13	88	7	76	61	-	27
75 years and over	10	52	4	25	19	10	7
Female, all ages	564	2 994	828	1 898	1 492	227	556
Under 5 years	46	269	85	183	144	14	50
3 and 4 years	25	79	29	44	65	-	11
5 to 9 years	106	389	148	207	210	50	64
5 years	25	63	21	34	49	13	5
6 years	15	81	42	41	39	11	13
10 to 14 years	60	305	98	319	231	48	90
14 years	18	32	23	70	72	14	18
15 to 19 years	79	317	98	223	200	10	73
15 years	38	75	20	56	50	-	15
16 years	24	46	28	62	51	5	4

Census Tracts With 400 or More Negro Population

	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0035
17 years	10	99	26	32	38	5	21
18 years	4	33	16	39	32	–	23
19 years	3	64	8	34	29	–	8
20 to 24 years	27	256	64	86	49	14	30
20 years	4	72	24	11	21	5	12
21 years	5	60	15	22	15	–	6
25 to 34 years	82	372	93	166	129	27	50
35 to 44 years	61	277	115	223	209	23	59
45 to 54 years	43	307	65	180	134	25	76
55 to 59 years	18	135	13	118	50	–	13
60 to 64 years	13	123	21	72	70	11	–
65 to 74 years	26	193	7	95	47	5	35
75 years and over	3	51	21	26	19	–	10
RELATIONSHIP TO HEAD OF HOUSEHOLD							
All persons	**927**	**5 468**	**1 499**	**3 398**	**2 865**	**417**	**1 134**
In households	927	5 456	1 499	3 398	2 784	417	1 088
Head of household	283	1 557	347	910	711	117	274
Head of family	219	1 255	315	702	582	95	236
Primary individual	64	302	32	208	129	22	38
Wife of head	80	706	169	518	359	61	175
Other relative of head	530	3 092	969	1 898	1 675	239	637
Not related to head	34	101	14	72	39		2
In group quarters	–	12	–	–	81	–	46
Persons per household	3 28	3 50	4 32	3 73	3 92	3 56	3 97
TYPE OF HOUSEHOLD							
All households	**283**	**1 557**	**347**	**910**	**711**	**117**	**274**
Male primary individual	14	103	22	85	71	5	17
Female primary individual	50	199	10	123	58	17	21
Husband-wife households	100	696	159	506	375	65	174
Households with other male head	14	83	5	35	54	12	14
Households with female head	105	476	151	161	153	18	48
SCHOOL ENROLLMENT							
Persons, 16 to 21 years old	**65**	**699**	**186**	**375**	**340**	**45**	**179**
Not attending school	12	400	92	171	150	19	85
Not high school graduates	–	226	42	103	94	14	36
Percent of total	–	32.3	22.6	27.5	27.6	31.1	20 1

Census Tracts With 400 or More Negro Population

	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0035
YEARS OF SCHOOL COMPLETED							
Persons, 25 years old and over	383	2 464	516	1 634	1 239	163	451
No school years completed	6	88	6	58	120	12	48
Elementary 1 to 4 years	57	335	45	332	216	20	141
5 to 7 years	39	426	119	322	229	30	70
8 years	18	280	37	206	100	4	44
High school 1 to 3 years	117	592	92	302	329	38	104
4 years	88	517	124	327	184	45	31
College 1 to 3 years	29	145	38	49	52	10	13
4 years or more	29	81	55	38	9	4	-
Median school years completed	10 8	9 5	10 7	8 5	8 5	10 2	6 2
Percent high school graduates	38 1	30 2	42 1	25 3	19 8	36 7	9 8
RESIDENCE IN 1965							
Persons, 5 years old and over, 1970	855	4 944	1 210	3 141	2 393	228	1 [illegible]
Same house as in 1970	444	2 977	521	2 251	1 647	120	586
Different house							
In central city of this SMSA	-	1 265	329	473	366	69	[illegible]
In other part of this SMSA	273	54	198	180	330	32	[illegible]
Outside this SMSA	77	301	93	144	151	7	55
North and West	19	39	23	32	14	-	[illegible]
South	58	262	70	112	137	7	[illegible]
Abroad	5	19	14	5	-	-	3

Includes "Moved, 1965 residence not reported"

able P-6 Economic Characteristics of the Negro Population: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

ensus Tracts With 400 or More Negro Population	Escambia County			Santa Rosa County	Pensacola									
	Total SMSA	Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014	Tract 0015
APLOYMENT STATUS AND OCCUPATION															
Male, 16 years old and over	**11 199**	**10 733**	**5 227**	**5 506**	**466**	**534**	**151**	**1 346**	**214**	**1 408**	**402**	**376**	**143**	**82**	**459**
or force	7 779	7 398	3 511	3 887	381	345	98	889	132	898	289	271	103	65	336
ivilian labor force	7 088	6 792	3 445	3 347	296	345	93	881	132	893	284	249	103	62	318
Employed	6 526	6 244	3 165	3 079	282	322	88	812	132	838	272	210	96	53	272
Unemployed	562	548	280	268	14	23	5	69	–	55	12	39	7	9	46
t in labor force	3 420	3 335	1 716	1 619	85	189	53	457	82	510	113	105	40	17	123
Female, 16 years old and over	**13 737**	**13 078**	**7 053**	**6 025**	**659**	**713**	**208**	**1 911**	**298**	**1 795**	**567**	**477**	**181**	**264**	**506**
bor force	6 363	6 054	3 492	2 562	309	369	96	1 004	162	816	324	213	88	129	218
ivilian labor force	6 332	6 023	3 481	2 542	309	369	96	1 004	162	810	324	213	88	129	213
Employed	5 653	5 376	3 102	2 274	277	332	81	886	159	754	282	199	82	83	200
Unemployed	679	647	379	268	32	37	15	118	3	56	42	14	6	46	13
t in labor force	7 374	7 024	3 561	3 463	350	344	112	907	136	979	243	264	93	135	288
rried women in labor force, husband present	2 812	2 717	1 321	1 396	95	190	42	366	52	275	96	100	26	41	95
With own children under 6 years	856	826	362	464	30	27	17	139	22	68	20	35	–	15	16
Total employed, 16 years old and over	**12 179**	**11 620**	**6 267**	**5 353**	**559**	**654**	**169**	**1 698**	**291**	**1 592**	**554**	**409**	**178**	**136**	**472**
fessional, technical, and kindred workers	805	750	423	327	55	49	8	71	58	49	31	88	12	10	32
nagers and administrators, except farm	147	147	90	57	–	9	6	30	4	16	–	8	5	–	5
es workers	240	240	113	127	–	18	–	12	18	40	6	9	5	–	5
rical and kindred workers	720	707	389	318	13	42	5	138	18	70	32	33	12	4	31
ftsmen, foremen, and kindred workers	1 289	1 231	655	576	58	70	31	192	30	178	41	33	32	9	39
ratives, except transport	1 464	1 386	680	706	78	74	15	187	19	213	48	26	4	22	72
nsport equipment operatives	779	744	407	337	35	59	6	114	14	85	64	9	10	–	28
borers, except farm	1 615	1 543	753	790	72	66	11	157	12	187	125	47	34	9	71
m workers	130	121	80	41	9	6	–	68	–	6	–	–	–	–	–
vice workers, except private household	2 953	2 865	1 546	1 319	88	132	61	389	70	444	95	115	30	54	133
vate household workers	2 037	1 886	1 131	755	151	129	26	340	48	304	112	41	34	28	56
Female employed, 16 years old and over	**5 653**	**5 376**	**3 102**	**2 274**	**277**	**332**	**81**	**886**	**159**	**754**	**282**	**199**	**82**	**83**	**200**
fessional, technical, and kindred workers	607	575	345	230	32	35	8	63	41	39	31	69	12	5	27
nagers and administrators, except farm	41	41	22	19	–	6	–	4	–	12	–	–	–	–	–
es workers	144	144	61	83	–	11	–	9	6	21	–	9	5	–	–
rical and kindred workers	415	410	224	186	5	31	5	75	13	48	19	11	6	–	16
eratives, including transport	465	458	288	170	7	56	4	97	11	45	32	4	–	14	25
er blue-collar workers	122	122	81	41	–	–	6	32	–	22	10	–	–	–	11
m workers	12	12	6	6	–	–	–	–	–	6	–	–	–	–	–
vice workers, except private household	1 860	1 775	957	818	85	68	32	270	45	257	78	65	25	36	65
vate household workers	1 987	1 839	1 118	721	148	125	26	336	43	304	112	41	34	28	56

Census Tracts With 400 or More Negro Population

	Total SMSA	Escambia County			Santa Rosa County	Pensacola								
		Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014
FAMILY INCOME IN 1969														
All families	8 915	8 506	4 386	4 120	409	410	134	1 230	188	1 074	385	309	115	170
Less than $1,000	764	730	385	345	34	40	39	106	–	112	16	12	6	16
$1 000 to $1 999	1 119	1 057	561	496	62	56	9	191	16	122	54	44	–	47
$2 000 to $2 999	965	918	506	412	47	45	11	142	9	133	47	20	32	35
$3 000 to $3 999	1 026	953	484	469	73	48	12	132	13	175	69	21	10	4
$4 000 to $4 999	961	923	491	432	38	48	13	142	13	115	39	32	7	19
$5 000 to $5 999	827	781	409	372	46	61	19	129	14	82	22	27	5	8
$6 000 to $6 999	861	826	356	470	35	15	8	144	12	69	40	19	–	9
$7 000 to $7 999	515	502	265	237	13	20	5	51	18	58	24	31	3	4
$8 000 to $8 999	575	557	288	269	18	5	6	77	26	75	32	15	21	16
$9 000 to $9,999	370	358	180	178	12	26	–	29	20	62	12	5	18	3
$10 000 or more	932	901	461	440	31	46	12	87	47	71	30	83	13	9
Median income Families	$4 607	$4 645	$4 523	$4 782	$3 842	$4 333	$3 667	$4 310	$7 944	$3 971	$4 167	$5 944	$5 500	$2 629
Families and unrelated individuals	$3 569	$3 622	$3 506	$3 755	$2 804	$3 086	$2 795	$3 578	$5 464	$3 074	$3 482	$5 236	$4 550	$2 714
RATIO OF FAMILY INCOME TO POVERTY LEVEL[1]														
Percent of families with incomes														
Less than .50 of poverty level	17.7	17.5	17.9	17.1	21.3	22.0	35.8	20.2	4.8	16.3	12.7	12.0	9.6	33.5
.50 to .74	11.4	11.1	10.5	11.8	17.4	8.3	5.2	10.2	6.4	12.3	16.4	13.2	26.1	13.5
.75 to .99	12.3	12.3	11.4	13.2	12.5	11.2	6.0	11.3	4.8	12.8	17.9	13.6	2.6	12.9
1.00 to 1.24	10.6	10.7	9.8	11.6	9.5	4.9	16.4	12.0	3.2	12.8	4.7	7.4	6.1	9.4
1.25 to 1.49	10.3	10.2	10.1	10.2	13.7	14.4	3.7	10.5	6.9	9.2	8.8	12.6	7.8	11.8
1.50 to 1.99	14.1	14.3	14.6	13.9	10.8	14.9	11.2	17.4	21.8	13.8	14.5	15.5	10.4	1.8
2.00 or more	23.6	24.0	25.7	22.2	14.9	24.4	21.6	18.5	52.1	22.8	24.9	35.6	37.4	17.1
INCOME BELOW POVERTY LEVEL[1]														
Families	3 684	3 475	1 743	1 732	209	170	63	513	30	444	181	89	44	102
Percent of all families	41.3	40.9	39.7	42.0	51.1	41.5	47.0	41.7	16.0	41.3	47.0	28.8	38.3	60.0
Mean family income	$2 203	$2 187	$2 069	$2 306	$2 460	$1 940	$1 447	$1 970	$2 062	$2 125	$2 598	$2 199	$2 385	$1 853
Mean income deficit	$1 892	$1 877	$1 868	$1 885	$2 142	$1 936	$2 556	$1 989	$1 745	$1 702	$1 747	$1 377	$1 637	$2 022
Percent receiving public assistance income	34.9	34.7	35.9	33.6	36.8	44.1	28.6	33.9	43.3	36.7	41.4	20.2	25.0	59.8
Mean size of family	4.75	4.70	4.48	4.94	5.58	4.52	4.48	4.39	4.57	4.31	5.35	4.00	4.50	4.36
With related children under 18 years	2 984	2 797	1 399	1 398	187	115	57	421	21	350	166	55	34	96
Mean number of related children under 18 years	3.47	3.41	3.20	3.61	4.44	3.63	3.25	3.02	...	3.07	3.87	2.65	3.12	3.09
With related children under 6 years	1 612	1 511	720	791	101	76	28	177	10	168	99	41	17	71
Mean number of related children under 6 years	1.79	1.79	1.64	1.92	1.88	1.43	1.25	1.47	...	1.48	2.16	1.59	...	1.59
Families with female head	1 946	1 816	1 033	783	130	101	37	325	26	257	83	44	35	88
With related children under 18 years	1 684	1 557	891	666	127	77	37	297	21	209	83	27	25	82
Mean number of related children under 18 years	3.17	3.09	2.93	3.30	4.17	3.42	2.49	2.93	...	2.81	2.88	2.11	3.16	3.09
With related children under 6 years	812	760	418	342	52	46	13	117	10	96	36	23	11	66
Percent in labor force	53.3	51.4	59.8	41.2	80.8	19.6	...	73.5	...	51.0	58.3	...	...	77.3
Mean number of related children under 6 years	1.65	1.66	1.54	1.81	1.56	1.20	...	1.53	...	1.51	1.67	...	...	1.64

ensus Tracts With 100 or More Negro Population

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014	Tract 0015
Family heads	**3 684**	**3 475**	**1 743**	**1 732**	**209**	**170**	**63**	**513**	**30**	**444**	**181**	**89**	**44**	**102**	**99**
Percent 65 years and over	14.4	14.9	16.5	13.3	5.7	28.2	11.1	18.5	30.0	15.3	7.2	15.7	–	12.7	20.2
Civilian male heads under 65 years	1 399	1 341	572	769	58	43	26	140	–	167	88	31	9	14	46
Percent in labor force	77.1	76.8	75.3	77.9	84.5	83.7	80.8	67.9	–	70.7	80.7	100.0	...	...	76.1
Unrelated individuals	**1 821**	**1 723**	**1 070**	**653**	**98**	**146**	**30**	**220**	**40**	**386**	**83**	**32**	**8**	–	**106**
Percent of all unrelated individuals	63.6	64.0	61.0	69.8	56.6	69.2	52.6	60.3	49.4	64.0	69.7	38.1	...	–	67.1
Mean income	$801	$787	$815	$742	$1 036	$985	$447	$852	$688	$787	$873	$488	...	–	$737
Mean income deficit	$1 028	$1 043	$1 017	$1 087	$756	$845	$1 382	$993	$1 112	$1 046	$942	$1 285	...	–	$1 124
Percent receiving public assistance income	29.7	28.5	25.9	32.8	51.0	28.8	66.7	27.7	15.0	22.3	12.0	15.6	...	–	36.8
Percent 65 years and over	40.4	39.7	39.9	39.4	52.0	37.7	53.3	37.3	42.5	38.1	41.0	71.9	...	–	31.1
Persons	**19 336**	**18 071**	**8 870**	**9 201**	**1 265**	**915**	**312**	**2 473**	**177**	**2 300**	**1 051**	**388**	**206**	**445**	**556**
Percent of all persons	46.5	45.6	45.2	45.9	66.6	46.3	53.5	46.4	21.3	47.5	61.5	30.1	37.5	56.3	38.5
Percent receiving Social Security income	8.5	8.4	8.9	8.0	8.8	11.4	7.7	7.1	18.1	12.2	5.4	5.9	1.9	3.1	11.5
Percent 65 years and over	8.2	8.4	9.7	7.1	5.4	13.3	7.4	8.5	18.1	10.5	5.5	13.4	5.3	4.3	14.6
Percent receiving Social Security income	58.1	57.1	55.2	59.7	80.9	61.5	...	56.0	84.4	58.3	43.1	23.1	...	...	56.8
Related children under 18 years	10 250	9 620	4 506	5 114	630	475	168	1 219	86	1 150	554	134	111	324	275
Percent living with both parents	39.5	40.1	36.0	43.8	29.4	22.7	54.8	28.3	–	34.6	54.2	67.2	35.1	22.8	60.0
Households	**4 739**	**4 477**	**2 381**	**2 096**	**262**	**255**	**82**	**621**	**58**	**726**	**226**	**106**	**38**	**93**	**164**
Percent of all households	46.0	45.8	44.5	47.3	50.9	46.3	55.4	44.1	28.0	49.0	51.2	30.5	32.8	55.7	40.2
Owner occupied	2 362	2 209	1 073	1 136	153	125	42	255	30	348	62	61	27	16	99
Mean value of unit	$8 000	$8 100	$8 500	$7 700	$6 600	$6 700	$5 700	$9 500	$7 000	$6 900	$5 500	$18 800	$9 300	...	$11 300
Renter occupied	2 377	2 268	1 308	960	109	130	40	366	28	378	164	45	11	77	65
Mean gross rent	$55	$55	$58	$51	$46	$62	$39	$59	$73	$57	$60	$58	...	$56	$52
Percent lacking some or all plumbing facilities	41.3	40.6	30.2	52.4	54.2	37.3	45.1	20.8	51.7	41.3	22.1	14.2	15.8	–	31.7

[1]Excludes inmates of institutions, members of the Armed Forces living in barracks, college students in dormitories, and unrelated individuals under 14 years

Table P-6. · Economic Characteristics of the Negro Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Negro Population	Balance of Escambia County													
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039
EMPLOYMENT STATUS AND OCCUPATION														
Male, 16 years old and over	**195**	**511**	**754**	**348**	**118**	**315**	**281**	**839**	**97**	**224**	**96**	**366**	**110**	**130**
Labor force	140	335	523	267	93	227	209	603	85	224	70	216	52	106
Civilian labor force	122	331	523	251	84	227	198	579	85	172	70	212	52	106
Employed	115	293	491	226	75	198	193	554	73	148	70	181	52	83
Unemployed	7	38	32	25	9	29	5	25	12	24	–	31	–	23
Not in labor force	55	176	231	81	25	88	72	236	12	100	26	150	58	24
Female, 16 years old and over	**213**	**627**	**830**	**496**	**115**	**377**	**317**	**936**	**119**	**331**	**109**	**415**	**117**	**163**
Labor force	97	276	376	232	62	158	106	444	80	125	22	159	26	84
Civilian labor force	97	276	376	232	62	158	106	444	80	125	22	159	26	84
Employed	73	235	358	204	52	148	88	413	59	121	22	141	26	62
Unemployed	24	41	18	28	10	10	18	31	21	4	–	18	–	22
Not in labor force	116	351	454	264	53	219	211	492	39	206	87	256	91	79
Married women in labor force, husband present	61	139	213	103	37	88	52	303	46	80	8	78	20	30
With own children under 6 years	28	54	72	46	9	34	11	78	12	10	4	46	14	13
Total employed, 16 years old and over	**188**	**528**	**849**	**430**	**127**	**346**	**281**	**967**	**132**	**269**	**92**	**322**	**78**	**145**
Professional, technical, and kindred workers	46	30	31	4	9	25	20	79	10	7	–	5	–	4
Managers and administrators, except farm	–	6	9	–	–	5	6	–	–	16	–	5	–	–
Sales workers	–	14	–	13	7	10	3	34	6	1	–	15	–	–
Clerical and kindred workers	16	35	42	48	11	10	26	57	6	18	–	20	–	13
Craftsmen, foremen, and kindred workers	12	80	109	37	6	38	53	117	9	17	–	15	6	20
Operatives, except transport	16	42	126	51	14	45	16	109	25	45	18	48	17	35
Transport equipment operatives	7	25	37	17	4	12	4	87	13	33	21	14	6	–
Laborers, except farm	23	64	132	91	27	45	52	130	8	21	22	64	18	22
Farm workers	–	–	–	–	–	5	5	–	–	–	11	–	12	8
Service workers, except private household	54	138	205	103	37	120	71	246	32	48	15	101	7	26
Private household workers	14	94	158	66	12	31	25	108	23	63	5	35	12	17
Female employed, 16 years old and over	**73**	**235**	**358**	**204**	**52**	**148**	**88**	**413**	**59**	**121**	**22**	**141**	**26**	**62**
Professional, technical, and kindred workers	27	30	9	4	4	19	16	66	–	–	–	5	–	4
Managers and administrators, except farm	–	–	4	–	–	5	–	–	–	–	–	–	–	–
Sales workers	–	14	–	8	4	4	–	24	–	1	–	15	–	–
Clerical and kindred workers	16	18	6	48	–	6	5	35	6	13	–	9	–	13
Operatives, including transport	–	14	56	10	5	5	16	16	4	11	4	–	7	9
Other blue-collar workers	–	–	11	5	6	–	–	4	–	–	–	–	7	–
Farm workers	–	–	–	–	–	–	–	–	–	–	6	–	–	–
Service workers, except private household	24	70	119	63	21	78	26	168	26	33	7	77	–	19
Private household workers	9	89	153	66	12	31	25	100	23	63	5	35	12	17

Census Tracts With 400 or More Negro Population

	Balance of Escambia County														
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040
FAMILY INCOME IN 1969															
All families	145	398	566	386	95	246	202	673	90	234	46	253	91	96	331
Less than $1 000	5	23	26	43	4	12	8	81	5	15	5	56	26	–	21
$1 000 to $1 999	13	25	65	71	11	49	10	25	6	48	–	18	13	14	105
$2 000 to $2 999	18	41	43	54	4	32	31	36	4	26	–	21	12	13	50
$3 000 to $3 999	14	71	78	76	11	6	42	45	14	11	4	35	10	–	33
$4 000 to $4 999	10	45	56	43	20	8	12	61	11	23	5	28	13	–	54
$5 000 to $5 999	7	47	80	24	–	30	5	80	4	27	–	24	5	14	6
$6 000 to $6 999	14	30	80	24	17	35	26	90	19	26	9	27	–	10	7
$7 000 to $7 999	–	16	47	15	–	12	18	63	5	27	–	20	–	–	8
$8 000 to $8 999	18	49	32	4	4	10	12	78	12	5	–	3	–	18	13
$9 000 to $9 999	–	20	24	12	5	4	10	32	10	6	–	4	–	18	15
$10 000 or more	46	31	35	20	19	48	28	82	–	22	23	17	12	9	19
Median income Families	$6 393	$4 867	$5 188	$3 329	$4 875	$5 533	$4 833	$6 094	$6 053	$4 783	$7 000	$3 900	$2 542	$6 700	$2 790
Families and unrelated individuals	$5 429	$3 816	$4 174	$3 204	$4 575	$5 367	$3 500	$5 570	$5 800	$2 625	$6 500	$2 976	$2 208	$5 429	$1 947
RATIO OF FAMILY INCOME TO POVERTY LEVEL[1]															
Percent of families with incomes															
Less than 50 of poverty level	12.4	7.3	13.4	27.7	4.2	17.1	5.9	16.2	16.7	15.3	10.9	36.4	48.4	14.6	22.7
50 to 74	3.4	18.8	11.7	18.1	12.6	16.7	15.3	7.0	–	17.4	–	5.9	6.6	7.3	18.1
75 to 99	13.1	13.6	8.7	18.1	13.7	4.5	16.8	6.1	12.2	13.6	30.4	17.4	7.7	11.5	25.4
1 00 to 1 24	6.9	10.1	14.7	11.7	15.8	14.2	9.4	14.4	22.2	11.4	–	6.7	–	–	10.0
1 25 to 1 49	19.3	11.6	16.8	8.0	9.5	11.4	8.9	12.5	13.3	9.3	–	7.5	7.7	–	3.0
1 50 to 1 99	16.6	17.3	14.7	5.4	18.9	12.2	19.3	14.1	23.3	11.9	21.7	10.7	18.7	27.1	9.1
2 00 or more	28.3	21.4	20.1	10.9	25.3	24.0	24.3	29.7	12.2	21.2	37.0	15.4	11.0	39.6	11.8
INCOME BELOW POVERTY LEVEL[1]															
Families	42	158	191	247	29	94	77	197	26	109	19	151	57	32	219
Percent of all families	29.0	39.7	33.7	64.0	30.5	38.2	38.1	29.3	28.9	46.2	41.3	59.7	62.6	33.3	66.2
Mean family income	$2 489	$2 846	$2 553	$2 350	$2 445	$1 988	$2 707	$1 925	$2 525	$2 124	...	$2 099	$1 446	$2 325	$2 109
Mean income deficit	$1 699	$1 413	$1 855	$1 855	$1 350	$1 798	$1 504	$2 519	$2 552	$1 504	...	$2 757	$2 951	$2 276	$1 537
Percent receiving public assistance income	40.5	22.8	33.5	34.0	17.2	16.0	27.3	20.3	–	47.7	...	33.8	38.6	62.5	63.9
Mean size of family	4.55	5.11	5.48	5.00	5.38	4.23	5.38	5.29	5.92	3.90	...	5.76	5.40	5.53	4.03
With related children under 18 years	37	127	152	217	14	58	61	181	26	76	19	139	50	32	152
Mean number of related children under 18 years	2.62	3.54	4.50	3.50	...	2.53	4.39	3.71	4.15	2.96	...	4.12	4.20	3.16	3.07
With related children under 6 years	20	63	98	162	7	24	29	83	10	28	9	112	38	19	77
Mean number of related children under 6 years	...	1.57	2.31	1.53	...	...	1.79	2.05	...	1.54	...	1.96	2.08	...	2.08
Families with female head	19	60	86	116	10	52	24	90	15	38	5	72	33	13	121
With related children under 18 years	19	46	67	112	–	28	24	84	15	38	5	65	26	13	100
Mean number of related children under 18 years	...	2.91	4.01	3.10	–	2.14	...	3.76	...	3.37	...	4.32	3.00	...	3.19
With related children under 6 years	8	15	32	81	–	4	11	47	4	16	–	51	14	–	59

Census Tracts With 400 or More Negro Population

	Balance of Escambia County														
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tra 00
Percent in labor force	...	...	65.6	45.7	–	–	–	40.4	...	...	–	31.4	–	–	3
Mean number of related children under 6 years	...	...	2.50	1.36	–	...	...	1.87	...	...	–	1.69	...	–	2.
Family heads	**42**	**158**	**191**	**247**	**29**	**94**	**77**	**197**	**26**	**109**	**19**	**151**	**57**	**32**	**3**
Percent 65 years and over	9.5	17.1	5.2	4.9	17.2	5.3	23.4	18.3	–	21.1	–	6.0	12.3	–	2
Civilian male heads under 65 years	12	74	95	119	14	37	36	88	11	48	14	79	24	19	
Percent in labor force	...	59.5	70.5	85.7	...	78.4	88.9	84.1	...	79.2	...	87.3	...	...	5
Unrelated individuals	**22**	**104**	**92**	**22**	**17**	**11**	**53**	**56**	–	**38**	**9**	**64**	**8**	**15**	1
Percent of all unrelated individuals	62.9	88.9	60.5	88.0	...	...	65.4	39.2	–	95.0	...	100.0	...	39.5	8
Mean income	...	$706	$688	...	...	...	$945	$513	–	$662	...	$793	...	...	$6
Mean income deficit	...	$1,164	$1,143	...	...	...	$858	$1,359	–	$1,176	...	$1,005	...	...	$9
Percent receiving public assistance income	–	7.7	17.4	...	...	...	20.8	35.7	–	86.8	...	39.1	...	...	5
Percent 65 years and over	...	14.4	39.1	...	...	...	54.7	19.6	–	44.7	...	60.9	...	–	5
Persons	**213**	**911**	**1,138**	**1,258**	**173**	**409**	**467**	**1,099**	**154**	**463**	**105**	**934**	**316**	**192**	**9**
Percent of all persons	30.3	46.8	42.0	68.0	41.5	35.4	49.0	32.1	31.0	42.6	34.2	61.7	69.0	42.0	6
Percent receiving Social Security income	19.2	11.3	6.3	3.5	12.1	11.2	9.9	6.0	–	6.9	3.8	3.9	5.1	–	1
Percent 65 years and over	3.8	8.0	4.0	1.7	8.7	6.1	11.3	6.1	–	13.6	4.8	5.1	4.7	–	1
Percent receiving Social Security income	...	65.8	56.5	...	...	40.0	64.2	55.2	–	27.0	–	39.6	...	–	7
Related children under 18 years	**111**	**468**	**601**	**772**	**62**	**153**	**267**	**682**	**107**	**244**	**50**	**559**	**184**	**88**	**6**
Percent living with both parents	6.3	48.1	43.9	44.0	69.4	58.2	53.2	45.7	42.1	41.4	90.0	50.6	63.6	25.0	1
Households	**55**	**233**	**248**	**248**	**46**	**80**	**105**	**207**	**17**	**126**	**23**	**206**	**65**	**41**	3
Percent of all households	34.4	49.5	38.9	65.8	39.3	36.4	46.7	30.0	21.0	49.8	57.5	66.9	54.4	40.6	3
Owner occupied	36	121	124	75	13	62	40	119	17	97	18	142	44	22	1
Mean value of unit	$6,900	$7,300	$10,500	$7,500	...	$9,000	$6,700	$8,400	...	$7,100	...	$5,900	$6,000	...	$3
Renter occupied	19	112	124	173	33	18	65	88	–	29	5	64	21	19	1
Mean gross rent	...	$61	$55	$51	$61	...	$56	$49	–	$68	...	$41	...	...	$
Percent lacking some or all plumbing facilities	67.3	53.6	54.8	25.0	45.7	42.5	33.3	48.3	–	54.8	...	68.0	55.4	100.0	6

Excludes inmates of institutions, members of the Armed Forces living in barracks, college students in dormitories, and unrelated individuals under 14 years

Table P-6 Economic Characteristics of the Negro Population: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Negro Population	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0035
EMPLOYMENT STATUS AND OCCUPATION							
Male, 16 years old and over	**163**	**1 399**	**277**	**970**	**783**	**118**	**324**
Labor force	144	922	205	671	552	93	224
Civilian labor force	132	914	184	649	552	84	172
Employed	128	845	168	565	520	75	148
Unemployed	4	69	16	84	32	9	24
Not in labor force	19	477	72	299	231	25	100
Female, 16 years old and over	**314**	**1 956**	**477**	**1 133**	**857**	**115**	**331**
Labor force	164	1 028	226	494	393	62	125
Civilian labor force	164	1 028	226	489	393	62	125
Employed	152	904	156	435	364	52	121
Unemployed	12	124	70	54	29	10	4
Not in labor force	150	928	251	639	464	53	206
Married women in labor force, husband present	47	372	102	234	218	37	80
With own children under 6 years	25	139	43	70	72	9	10
Total employed, 16 years old and over	**280**	**1 749**	**324**	**1 000**	**884**	**127**	**269**
Professional, technical, and kindred workers	39	71	56	62	31	9	7
Managers and administrators, except farm	-	30	-	11	9	-	16
Sales workers	-	12	-	19	-	7	1
Clerical and kindred workers	13	138	20	66	42	11	18
Craftsmen, foremen, and kindred workers	27	192	21	119	109	6	17
Operatives, except transport	37	200	38	114	126	14	45
Transport equipment operatives	9	122	7	53	50	4	33
Laborers, except farm	28	173	32	135	148	27	21
Farm workers	-	68	-	-	-	-	-
Service workers, except private household	56	403	108	271	205	37	48
Private household workers	71	340	42	150	164	12	63
Female employed, 16 years old and over	**152**	**904**	**156**	**435**	**364**	**52**	**121**
Professional, technical, and kindred workers	16	63	32	57	9	4	-
Managers and administrators, except farm	-	4	-	-	4	-	-
Sales workers	-	9	-	14	-	4	1
Clerical and kindred workers	5	75	16	34	6	-	13
Operatives, including transport	7	101	14	39	56	5	11
Other blue-collar workers	-	32	-	11	11	6	-
Farm workers	-	-	-	-	-	-	-
Service workers, except private household	53	284	57	135	119	21	33
Private household workers	71	336	37	145	159	12	63

Census Tracts With 400 or More Negro Population

	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tr 00
FAMILY INCOME IN 1969							
All families	219	1 255	315	782	582	95	2
Less than $1 000	34	111	21	57	26	4	
$1 000 to $1 999	21	191	60	47	65	11	
$2 000 to $2 999	25	142	53	69	47	4	
$3 000 to $3 999	24	136	18	71	78	11	
$4 000 to $4 999	25	152	29	108	56	20	
$5 000 to $5 999	23	129	15	64	86	-	
$6 000 to $6 999	18	150	23	65	80	17	
$7 000 to $7 999	8	51	4	53	53	-	
$8 000 to $8 999	14	77	34	64	32	4	
$9 000 to $9 999	12	29	3	25	24	5	
$10 000 or more	15	87	55	79	35	19	
Median income Families	$4 220	$4 313	$4 190	$4 991	$5 221	$4 875	$4 7
Families and unrelated individuals	$3 232	$3 560	$3 917	$4 013	$4 217	$4 575	$2 6
RATIO OF FAMILY INCOME TO POVERTY LEVEL[1]							
Percent of families with incomes							
Less than 50 of poverty level	28.3	20.2	23.8	12.1	13.1	4.2	15
50 to 74	15.1	10.4	8.9	14.0	11.3	12.6	17
75 to 99	11.9	11.1	13.0	10.5	9.1	13.7	13
1 00 to 1 24	5.9	12.5	8.3	10.1	14.3	15.8	11
1 25 to 1 49	6.8	10.3	15.2	9.8	17.4	9.5	9
1 50 to 1 99	10.0	17.1	8.6	15.4	14.3	18.9	11
2 00 or more	21.9	18.6	22.2	28.1	20.6	25.3	21
INCOME BELOW POVERTY LEVEL[1]							
Families	121	522	144	257	193	29	1
Percent of all families	55.3	41.6	45.7	36.6	33.5	30.5	44
Mean family income *	$2 298	$1 968	$2 039	$2 521	$2 543	$2 445	$2 1
Mean income deficit	$2 503	$1 992	$1 927	$1 663	$1 826	$1 350	$1 5
Percent receiving public assistance income	46.3	33.3	54.2	20.6	32.8	17.2	47
Mean size of family	5.92	4.40	4.42	4.89	5.41	5.38	3.9
With related children under 18 years	114	425	133	207	152	14	
Mean number of related children under 18 years	4.80	3.03	2.96	3.37	4.50	...	2.5
With related children under 6 years	60	177	91	92	98	7	
Mean number of related children under 6 years	1.83	1.47	1.59	1.82	2.31	...	1
Families with female head	92	325	107	97	86	10	
With related children under 18 years	89	297	101	79	67	-	
Mean number of related children under 18 years	4.74	2.93	3.15	2.85	4.01	-	3.5
With related children under 6 years	46	117	74	15	32	-	
Percent in labor force	78.3	73.5	73.0	...	65.6	-	
Mean number of related children under 6 years	1.63	1.53	1.64	...	2.50	-	

Census Tracts With 400 or More Negro Population

	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0035
Family heads	121	522	744	257	195	29	109
Percent 65 years and over	5.8	19.9	11.8	18.3	5.1	17.2	21.1
Civilian male heads under 65 years	25	140	26	120	99	14	48
Percent in labor force	100.0	67.9	65.4	65.8	71.7	...	79.2
Unrelated individuals	44	241	22	218	92	17	38
Percent of all unrelated individuals	50.0	60.4	53.7	76.4	55.8	...	95.0
Mean income	$964	$835	...	$722	$688	...	$642
Mean income deficit	$855	$1 009	...	$1 144	$1 143	...	$1 176
Percent receiving public assistance income	26.1	25.3	-	22.4	17.4	...	86.8
Percent 65 years and over	13.0	35.7	...	22.9	39.1	...	44.7
Persons	762	2 536	658	1 467	1 146	173	463
Percent of all persons	82.7	46.5	44.0	43.2	41.2	41.5	42.6
Percent receiving Social Security income	5.4	7.6	8.4	11.4	6.3	12.1	6.9
Percent 65 years and over	2.4	9.1	4.1	10.5	4.0	8.7	13.6
Percent receiving Social Security income	...	58.4	66.7	61.0	56.5	...	27.0
Related children under 18 years	368	1 240	435	743	601	62	244
Percent living with both parents	18.5	27.8	18.6	52.5	43.9	69.4	41.4
Households	128	643	148	397	252	46	126
Percent of all households	51.2	44.3	45.3	45.2	37.8	39.3	49.8
Owner occupied	75	255	52	220	128	13	97
Mean value of unit	$6 700	$9 500	$7 200	$9 100	$10 200	...	$7 100
Renter occupied	53	388	96	177	124	33	29
Mean gross rent	$40	$59	$58	$58	$55	$61	$68
Percent lacking some or all plumbing facilities	63.3	22.9	25.0	44.6	55.6	45.7	54.8

[1]Excludes inmates of institutions, members of the Armed Forces living in barracks, college students in dormitories, and unrelated individuals under 14 years.

Table P-7. General and Social Characteristics of Persons of Spanish Language: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Persons of Spanish Language	Total SMSA	Escambia County			Santa Rosa Cou
		Total	Pensacola	Balance	
AGE BY SEX					
Male, all ages	1 822	1 669	546	1 123	
Under 5 years	213	199	80	119	
3 and 4 years	92	78	20	58	
5 to 9 years	149	149	40	109	
5 years	47	47	26	21	
6 years	12	12	7	5	
10 to 14 years	287	271	100	171	
14 years	68	68	57	11	
15 to 19 years	236	204	61	143	
15 years	57	47	19	28	
16 years	38	30	15	15	
17 years	48	42	11	31	
18 years	71	63	16	47	
19 years	22	22	-	22	
20 to 24 years	303	256	45	211	
20 years	98	90	23	67	
21 years	6	6	-	6	
25 to 34 years	215	189	58	131	
35 to 44 years	199	188	57	131	
45 to 54 years	105	98	30	68	
55 to 59 years	35	35	20	15	
60 to 64 years	41	41	30	11	
65 to 74 years	25	25	25	-	
75 years and over	14	14	-	14	
Female, all ages	1 660	1 514	547	967	
Under 5 years	139	100	40	60	
3 and 4 years	56	31	18	13	
5 to 9 years	281	266	108	158	
5 years	81	72	22	50	
6 years	47	41	17	24	
10 to 14 years	195	183	50	133	
14 years	29	29	6	23	

Census Tracts With 400 or More Persons of Spanish Language

	Total SMSA	Escambia County			Santa Rosa County
		Total	Pensacola	Balance	
15 to 19 years	228	207	48	159	21
15 years	34	34	–	34	–
16 years	31	31	7	24	–
17 years	50	50	16	34	–
18 years	45	38	7	31	7
19 years	68	54	18	36	14
20 to 24 years	164	144	40	104	20
20 years	16	10	6	4	6
21 years	47	47	20	27	–
25 to 34 years	218	198	86	112	20
35 to 44 years	210	200	60	140	10
45 to 54 years	100	91	32	59	9
55 to 59 years	62	62	37	25	–
60 to 64 years	5	5	–	5	–
65 to 74 year	17	17	17	–	–
75 years and over	41	41	29	12	–
RELATIONSHIP TO HEAD OF HOUSEHOLD					
All persons	**3 482**	**3 183**	**1 093**	**2 090**	**299**
In households	3 291	3 016	1 084	1 932	275
Head of household	805	730	264	466	75
Head of family	749	674	233	441	75
Primary individual	56	56	31	25	–
Wife of head	676	603	196	407	73
Other relative of head	1 757	1 636	617	1 019	121
Not related to head	53	47	7	40	6
In group quarters	191	167	9	158	24
Persons per household	4.09	4.13	4.11	4.15	3.67
TYPE OF HOUSEHOLD					
All households	**805**	**730**	**264**	**466**	**75**
Male primary individual	39	39	14	25	–
Female primary individual	17	17	17	–	–
Husband-wife households	685	610	203	407	75
Households with other male head	6	6	6	–	–
Households with female head	58	58	24	34	–

Census Tracts With 400 or More Persons of Spanish Language

	Total SMSA	Escambia County			Santa Rosa Coun
		Total	Pensacola	Balance	
SCHOOL ENROLLMENT					
Persons, 16 to 21 years old	540	483	139	344	5
Not attending school	255	225	29	196	3
Not high school graduates	70	57	6	51	1
Percent of total	13.0	11.8	4.3	14.8	22.
YEARS OF SCHOOL COMPLETED					
Persons, 25 years old and over	1 287	1 204	481	723	8
No school years completed	26	26	12	14	
Elementary 1 to 4 years	30	30	23	7	
5 to 7 years	100	100	64	36	
8 years	118	118	27	91	
High school 1 to 3 years	220	212	64	148	
4 years	465	449	172	277	1
College 1 to 3 years	174	134	65	69	4
4 years or more	154	135	54	81	1
Median school years completed	12.3	12.3	12.3	12.2	14.
Percent high school graduates	61.6	59.6	60.5	59.1	90.
RESIDENCE IN 1965					
Persons, 5 years old and over, 1970[1]	3 130	2 884	973	1 911	34
Same house as in 1970	1 121	1 030	449	581	9
Different house:					
In central city of this SMSA	206	199	61	138	
In other part of this SMSA	268	266	85	181	
Outside this SMSA	1 003	908	223	685	3
North and West	566	497	78	419	6
South	437	411	145	266	2
Abroad	263	231	21	210	1

[1]Includes "Moved, 1965 residence not reported."

Table P-8. Economic Characteristics of Persons of Spanish Language: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Persons of Spanish Language	Total SMSA	Escambia County			Santa Rosa County
		Total	Pensacola	Balance	
EMPLOYMENT STATUS AND OCCUPATION					
Male, 16 years old and over	1 116	1 083	387	696	113
Labor force	968	855	248	607	113
Civilian labor force	634	586	221	365	48
Employed	621	580	215	365	41
Unemployed	13	6	6	–	7
Not in labor force	148	148	59	89	–
Female, 16 years old and over	1 011	931	349	582	80
Labor force	324	311	120	191	13
Civilian labor force	315	302	120	182	13
Employed	294	281	107	174	13
Unemployed	21	21	13	8	–
Not in labor force	687	620	229	391	67
Married women in labor force, husband present	215	209	84	125	6
With own children under 6 years	29	23	6	17	6
Total employed, 16 years old and over	915	861	322	539	54
Professional, technical, and kindred workers	190	184	86	98	6
Managers and administrators, except farm	98	92	32	60	6
Sales workers	94	94	41	53	–
Clerical and kindred workers	151	138	54	84	13
Craftsmen, foremen and kindred workers	137	122	47	75	15
Operatives except transport	55	55	5	50	–
Transport equipment operatives	33	25	9	16	8
Laborers except farm	43	37	9	28	6
Farm workers	6	6	–	6	–
Service workers, except private household	108	108	39	69	–
Private household workers	–	–	–	–	–
Female employed, 16 years old and over	294	281	107	174	13
Professional, technical, and kindred workers	72	72	42	30	–
Managers and administrators, except farm	7	7	7	–	–
Sales workers	25	25	5	20	–
Clerical and kindred workers	81	68	25	43	13
Operatives, including transport	18	18	–	18	–
Other blue-collar workers	–	–	–	–	–
Farm workers	–	–	–	–	–
Service workers, except private household	91	91	28	63	–
Private household workers	–	–	–	–	–

Census Tracts With 400 or More Persons of Spanish Language

	Total SMSA	Escambia County			Santa Rosa Coun
		Total	Pensacola	Balance	
FAMILY INCOME IN 1969					
All families	749	674	233	441	
Less than $1,000	13	13	6	7	
$1,000 to $1,999	38	29	15	14	
$2,000 to $2,999	43	36	8	28	
$3,000 to $3,999	71	71	13	58	
$4,000 to $4,999	34	19	12	7	
$5,000 to $5,999	67	67	27	40	
$6,000 to $6,999	49	37	5	32	
$7,000 to $7,999	79	73	20	53	
$8,000 to $8,999	64	57	24	33	
$9,000 to $9,999	66	66	15	51	
$10,000 or more	225	206	88	118	
Median income: Families	$7 753	$7 890	$8 438	$7 651	$6 5
Families and unrelated individuals	$5 918	$5 974	$7 500	$5 754	$4 6
RATIO OF FAMILY INCOME TO POVERTY LEVEL[1]					
Percent of families with incomes:					
Less than .50 of poverty level	6.7	7.4	6.0	8.2	
.50 to .74	3.2	2.2	6.4	–	12
.75 to .99	4.4	4.9	2.1	6.3	
1.00 to 1.24	5.9	4.3	2.6	5.2	20
1.25 to 1.49	8.1	9.1	9.0	9.1	
1.50 to 1.99	14.6	13.4	13.3	13.4	25
2.00 or more	57.1	58.8	60.5	57.8	42
INCOME BELOW POVERTY LEVEL[1]					
Families	107	98	34	64	
Percent of all families	14.3	14.5	14.6	14.5	12
Mean family income	$2 073	$2 103	$1 953	$2 182	
Mean income deficit	$1 773	$1 824	$1 605	$1 941	
Percent receiving public assistance income	5.6	6.1	–	9.4	
Mean size of family	4.22	4.34	3.85	4.59	
With related children under 18 years	87	78	21	57	
Mean number of related children under 18 years	2.79	3.00	...	2.86	
With related children under 6 years	48	48	21	27	
Mean number of related children under 6 years	1.48	1.48	...	...	
Families with female head	34	34	13	21	
With related children under 18 years	27	27	13	14	
Mean number of related children under 18 years	...	...	...	...	
With related children under 6 years	13	13	13	–	
Percent in labor force	–	–	–	–	
Mean number of related children under 6 years	...	...	...	–	

Census Tracts With 400 or More Persons of Spanish Language

	Total SMSA	Escambia County			Santa Rosa County
		Total	Pensacola	Balance	
Family heads	**187**	**98**	**34**	**64**	**9**
Percent 65 years and over	12.1	13.3	17.6	10.9	–
Civilian male heads under 65 years	45	45	8	37	–
Percent in labor force	86.7	86.7	...	83.8	–
Unrelated individuals	**47**	**47**	**25**	**22**	–
Percent of all unrelated individuals	44.3	44.3	53.2	37.3	–
Mean income	$614	$614	...	...	–
Mean income deficit	$1 222	$1 222	...	...	–
Percent receiving public assistance income	23.4	23.4	...	–	–
Percent 65 years and over	40.4	40.4	...	–	–
Persons	**499**	**472**	**156**	**316**	**27**
Percent of all persons	15.2	15.6	14.3	16.4	10.0
Percent receiving Social Security income	8.2	8.7	17.3	4.4	–
Percent 65 years and over	6.4	6.8	16.0	2.2	–
Percent receiving Social Security income	...	...	...	...	–
Related children under 18 years	341	325	138	187	16
Percent living with both parents	58.1	60.9	33.3	81.3	–
Households	**136**	**117**	**48**	**69**	**9**
Percent of all households	17.2	17.6	19.2	16.7	13.0
Owner occupied	62	62	27	35	–
Mean value of unit	$8 200	$8 200	...	$8 400	–
Renter occupied	64	55	21	34	9
Mean gross rent	$75	$87	...	$95	–
Percent lacking some or all plumbing facilities	17.5	18.8	22.9	15.9	–

[1]Excludes inmates of institutions, members of the Armed Forces living in barracks, college students in dormitories, and unrelated individuals under 14 years.

Table H-1. Occupancy, Utilization, and Financial Characteristics of Housing Units: 1970

[For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
All housing units	77 292	65 141	21 063	44 078	12 151	119	1 689	1 760	1 676	941	1 872	1 169	2 411	1 377	2 336
Vacant – seasonal and migratory	120	76	6	70	44	–	–	1	–	–	1	–	–	–	1
All year-round housing units	77 172	65 065	21 057	44 008	12 107	119	1 689	1 759	1 676	941	1 871	1 169	2 411	1 377	2 335
TENURE, RACE, AND VACANCY STATUS															
Owner occupied	50 457	42 566	12 607	29 959	7 891	27	605	1 061	685	563	818	372	1 475	1 051	1 624
Cooperative and condominium	123	118	29	89	5	–	6	8	8	–	–	–	7	–	–
White	43 798	36 254	9 709	26 545	7 544	18	334	950	45	427	48	195	1 204	1 018	1 622
Negro	6 489	6 160	2 859	3 301	329	9	266	94	640	135	770	174	269	32	–
Renter occupied	20 776	17 821	6 701	11 120	2 955	79	858	533	866	229	831	653	732	250	576
White	16 006	13 264	3 876	9 388	2 742	64	521	464	34	128	62	382	629	248	575
Negro	4 490	4 314	2 790	1 524	176	14	331	59	832	101	769	265	96	1	–
Vacant year-round	5 939	4 678	1 749	2 929	1 261	13	226	165	125	149	222	144	204	76	135
For sale only	922	698	246	452	224	1	18	38	2	28	13	21	31	10	10
Vacant less than 6 months	628	472	143	329	156	...	5	27	...	13	5	11	10	4	9
Median price asked	$11 500	$11 700	$12 100	$11 600	$10 600	–	$10 600	$7 700	...	$12 500	$7 500	$6 700	$13 500	$20 000	$23 800
For rent	2 864	2 419	1 002	1 417	445	11	167	76	76	86	144	78	105	24	72
Vacant less than 2 months	1 428	1 150	392	758	278	–	71	29	36	7	28	41	20	6	52
Median rent asked	$66	$64	$61	$67	$79	$45	$57	$75	$36	$70	$41	$44	$76	$97	$170
Other	2 153	1 561	501	1 060	592	1	41	51	47	35	65	45	68	42	53
LACKING SOME OR ALL PLUMBING FACILITIES															
All units	5 716	4 617	1 698	2 919	1 099	12	312	52	270	68	610	160	42	3	5
Owner occupied	2 534	1 986	449	1 537	548	–	58	33	75	16	140	36	21	3	3
Negro	1 345	1 222	363	859	123	–	42	20	72	14	137	23	11	–	–
Renter occupied	2 255	1 955	984	971	300	10	206	15	160	46	349	92	20	–	1
Negro	1 618	1 517	823	694	101	–	132	11	159	42	326	55	14	–	–
Vacant year-round	927	676	265	411	251	2	48	4	35	6	121	32	1	–	1
For sale only	98	45	8	37	53	–	2	–	–	1	3	2	–	–	–
For rent	461	390	191	199	71	2	38	1	22	2	88	24	1	–	–

Census Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
COMPLETE KITCHEN FACILITIES AND ACCESS															
Lacking complete kitchen facilities	3 170	2 534	623	1 911	636	5	123	23	92	18	183	75	41	4	8
Access only through other living quarters	34	33	27	6	1	–	–	2	7	2	3	2	7	–	–
ROOMS															
1 room	683	592	359	233	91	20	107	8	38	15	95	40	8	7	5
2 rooms	2 029	1 731	813	918	298	22	175	43	89	63	154	68	80	18	27
3 rooms	7 483	6 473	2 717	3 756	1 010	29	428	183	389	114	487	246	304	73	178
4 rooms	15 879	13 227	3 430	9 797	2 652	17	292	425	440	131	340	287	350	114	346
5 rooms	21 352	17 863	4 736	13 127	3 489	12	289	487	339	165	309	274	601	279	374
6 rooms	17 551	14 794	4 668	10 126	2 757	5	224	412	228	170	276	148	598	403	510
7 rooms	7 819	6 678	2 556	4 122	1 141	3	89	131	101	142	127	67	283	280	425
8 rooms	2 863	2 423	1 085	1 338	440	3	45	54	35	57	55	25	108	117	284
9 rooms or more	1 513	1 284	693	591	229	8	40	16	17	84	28	14	79	86	186
Median	5.1	5.1	5.2	5.1	5.1	3.1	4.0	5.0	4.2	5.4	4.1	4.3	5.3	6.0	6.0
All occupied housing units	**71 233**	**60 387**	**19 308**	**41 079**	**10 846**	**106**	**1 463**	**1 594**	**1 551**	**792**	**1 649**	**1 025**	**2 207**	**1 301**	**2 200**
PERSONS															
1 person	9 380	8 235	3 650	4 585	1 145	58	487	299	288	184	444	264	599	273	246
2 persons	20 611	17 451	5 764	11 687	3 160	24	481	519	354	264	415	261	844	514	715
3 persons	13 675	11 554	3 400	8 154	2 121	11	183	323	248	130	240	170	331	233	384
4 persons	12 054	10 140	2 808	7 332	1 914	2	104	195	205	95	192	95	170	144	412
5 persons	7 514	6 221	1 679	4 542	1 293	2	70	118	148	60	119	79	121	68	238
6 persons or more	7 999	6 786	2 007	4 779	1 213	9	138	140	308	59	239	156	142	69	205
Median, all occupied units	2.9	2.9	2.6	3.0	3.0	1.4	2.0	2.5	3.0	2.3	2.4	2.5	2.1	2.2	2.9
Median, owner occupied units	3.1	3.0	2.8	3.1	3.2	2.1	2.1	2.5	2.7	2.3	2.5	2.5	2.2	2.3	3.3
Median, renter occupied units	2.6	2.5	2.3	2.7	2.7	1.3	1.9	2.4	3.3	2.3	2.3	2.4	1.9	2.0	2.2
Units with roomers, boarders, or lodgers	1 264	1 164	548	616	100	7	81	44	44	29	95	52	52	27	29
PERSONS PER ROOM															
1.00 or less	64 483	54 630	17 545	37 085	9 853	99	1 288	1 464	1 154	730	1 341	844	2 110	1 283	2 146
1.01 to 1.50	4 727	3 981	1 081	2 900	746	4	95	93	213	34	145	122	67	12	39
1.51 or more	2 023	1 776	682	1 094	247	3	80	37	184	28	163	59	30	6	15
Units with all plumbing facilities – 1.01 or more	5 517	4 706	1 424	3 282	811	7	118	120	330	43	189	159	87	18	54

Census Tracts

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
VALUE															
Specified owner occupied units[1]	**43 162**	**37 417**	**11 838**	**25 579**	**5 745**	**18**	**496**	**989**	**636**	**522**	**740**	**324**	**1 349**	**1 027**	**1 588**
Less than $5,000	4 916	4 040	928	3 112	876	2	124	147	145	29	189	66	60	3	38
$5,000 to $7,499	5 437	4 641	1 263	3 378	796	5	135	208	205	30	191	100	139	36	53
$7,500 to $9,999	5 732	5 094	1 258	3 836	638	4	91	217	122	27	140	76	207	53	81
$10,000 to $14,999	11 960	10 659	2 762	7 897	1 301	4	99	270	104	125	159	53	535	282	167
$15,000 to $19,999	7 258	6 295	2 379	3 916	963	–	29	104	38	134	37	17	240	269	247
$20,000 to $24,999	3 529	3 039	1 451	1 588	490	–	10	23	10	77	20	8	100	153	326
$25,000 to $34,999	2 850	2 444	1 161	1 283	406	–	5	13	8	59	1	1	49	126	394
$35,000 to $49,999	1 054	856	444	412	198	1	3	6	3	27	3	1	17	60	214
$50,000 or more	426	349	192	157	77	2	–	1	1	14	–	2	2	45	68
Median	$12 100	$12 100	$14 500	$11 400	$12 000	$8 800	$7 300	$9 100	$7 100	$16 700	$7 400	$7 400	$12 400	$17 200	$23 200
CONTRACT RENT															
Specified renter occupied units[2]	**20 125**	**17 396**	**6 592**	**10 804**	**2 729**	**79**	**853**	**529**	**809**	**225**	**825**	**639**	**728**	**250**	**575**
Less than $30	1 333	1 136	443	693	197	2	66	20	81	12	97	98	28	–	5
$30 to $39	1 397	1 287	778	509	110	12	110	19	169	23	234	97	41	3	3
$40 to $59	4 113	3 782	2 008	1 774	331	16	320	129	426	63	333	313	157	24	32
$60 to $79	3 728	3 359	1 143	2 216	369	14	196	157	86	53	91	92	206	54	70
$80 to $99	2 233	2 014	406	1 608	219	1	47	68	9	30	13	11	82	51	26
$100 to $149	3 343	2 814	752	2 062	529	16	50	41	4	19	7	5	136	80	116
$150 to $199	1 567	1 385	688	697	182	12	12	58	1	4	1	–	37	19	280
$200 to $249	121	89	17	72	32	–	–	–	–	–	–	1	–	1	11
$250 or more	61	59	12	47	2	1	1	–	–	2	–	–	–	1	6
No cash rent	2 229	1 471	345	1 126	758	5	51	37	33	19	49	22	41	17	26
Median	$70	$69	$59	$77	$79	$67	$54	$69	$45	$62	$43	$46	$70	$93	$154

[1]Limited to one-family homes on less than 10 acres and no business on property [2]Excludes one-family homes on 10 acres or more

Table H-1. Occupancy, Utilization, and Financial Characteristics of Housing Units: 1970—Continued

[For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Pensacola—Con.										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
All housing units	1 968	741	1 831	274	538	32	135	62	78	54	123	448	1 322	1 807	512
Vacant—seasonal and migratory	2	–	1	–	–	–	–	–	–	–	–	–	–	1	–
All year-round housing units	1 966	741	1 830	274	538	32	135	62	78	54	123	448	1 322	1 806	512
TENURE, RACE, AND VACANCY STATUS															
Owner occupied	1 658	500	1 511	71	314	21	102	38	61	50	58	348	789	1 359	299
Cooperative and condominium	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
White	1 656	497	1 389	9	44	3	102	38	60	50	45	346	775	1 223	1
Negro	1	2	117	62	270	18	–	–	–	–	13	–	14	131	298
Renter occupied	253	219	248	129	178	9	23	18	13	4	48	74	466	367	171
White	253	218	225	4	11	–	23	18	13	4	17	74	461	322	–
Negro	–	–	22	124	167	9	–	–	–	–	31	–	2	43	171
Vacant year-round	55	22	71	74	46	2	10	6	4	–	17	26	67	80	42
For sale only	27	3	34	–	3	1	5	–	1	–	–	13	11	11	–
Vacant less than 6 months	23	...	26	–	...	...	1	–	...	–	–	13	8	4	–
Median price asked	$18 800	...	$14 500	–	...	...	$18 100	–	...	–	–	$27 800	$8 800	$11 600	–
For rent	7	14	22	73	40	1	2	3	1	–	9	10	39	40	37
Vacant less than 2 months	2	8	8	72	10	...	...	...	...	–	1	4	23	16	13
Median rent asked	$165	$132	$107	$135	$37	...	...	...	...	–	$38	$140	$89	$69	$39
Other	21	5	15	1	3	–	3	3	2	–	8	3	17	29	5
LACKING SOME OR ALL PLUMBING FACILITIES															
All units	6	1	13	3	128	10	1	–	2	–	27	13	20	79	149
Owner occupied	5	–	10	3	38	5	1	–	2	–	3	11	13	42	51
Negro	–	–	4	2	33	5	–	–	–	–	2	–	1	25	51
Renter occupied	1	–	2	–	78	4	–	–	–	–	19	2	5	32	79
Negro	–	–	2	–	78	4	–	–	–	–	17	–	...	21	79
Vacant year-round	–	1	1	–	12	...	–	–	–	–	5	–	2	5	19
For sale only	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–
For rent	–	–	–	–	12	...	–	–	–	–	5	–	1	5	16

Census Tracts	Pensacola – Con.										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
)MPLETE KITCHEN FACILITIES AND ACCESS															
cking complete kitchen facilities	1	1	7	1	37	3	–	–	1	–	16	1	12	37	57
cess only through other living quarters	–	–	–	1	3	–	–	–	–	–	–	–	–	–	1
)OMS															
room	1	1	2	1	9	–	1	–	1	–	1	1	4	2	2
ooms	1	9	10	2	37	5	7	3	–	–	6	8	27	23	18
ooms	27	43	56	13	110	7	19	7	4	–	35	17	173	102	104
ooms	94	205	181	49	120	8	10	12	9	–	24	97	382	370	140
ooms	576	165	493	175	114	5	21	15	33	10	28	131	308	545	114
ooms	707	184	593	27	100	2	33	18	19	11	17	109	249	482	74
ooms	404	82	313	6	33	4	30	6	10	20	8	56	118	194	41
ooms	115	38	116	–	10	1	10	1	2	9	2	26	40	57	13
ooms or more	41	14	66	1	5	–	4	–	–	4	2	3	21	31	6
dian	5.9	5.2	5.8	4.9	4.4	4.0	5.8	5.1	5.3	6.8	4.3	5.3	4.7	5.2	4.4
All occupied housing units	**1 911**	**719**	**1 759**	**200**	**492**	**30**	**125**	**56**	**74**	**54**	**106**	**422**	**1 255**	**1 726**	**470**
RSONS															
person	87	75	166	9	119	6	25	12	7	2	22	37	162	171	67
persons	382	238	488	33	121	10	46	25	26	4	36	116	463	442	102
ersons	432	154	389	36	74	1	23	11	15	12	24	102	250	361	67
ersons	551	124	342	45	73	3	20	5	9	22	11	89	180	331	64
ersons	286	77	205	32	29	2	6	–	9	10	6	41	117	203	45
ersons or more	173	51	169	45	76	8	5	3	8	4	7	37	83	218	125
dian, all occupied units	3.6	2.8	3.1	4.0	2.6	2.4	2.3	2.1	2.8	3.9	2.4	3.1	2.5	3.2	3.5
dian, owner occupied units	3.7	3.1	3.1	3.1	2.8	2.4	2.4	2.1	2.6	4.0	2.3	3.2	3.1	3.3	3.4
dian, renter occupied units	3.0	2.3	2.8	4.3	2.2	2.3	2.0	2.5	3.3	...	2.4	2.5	2.1	2.8	3.7
ts with roomers, boarders, or lodgers	15	7	31	1	25	–	5	2	–	2	6	9	19	28	17
RSONS PER ROOM															
0 or less	1 845	694	1 671	149	408	20	124	54	68	53	95	396	1 198	1 559	338
1 to 1.50	62	23	76	39	44	4	–	2	6	1	5	22	53	130	72
1 or more	4	2	12	12	40	6	1	–	–	–	6	4	4	37	60
ts with all plumbing facilities – 1.01 or more	65	25	85	51	56	7	1	2	6	1	7	26	56	144	90

Census Tracts	Pensacola – Con.										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
.LUE															•
Specified owner occupied units[1]	1 636	416	1 478	64	293	21	98	36	57	50	51	310	662	1 169	276
: than $5,000	9	14	19	3	55	6	–	12	7	–	10	28	60	75	54
000 to $7,499	13	11	36	12	68	6	2	5	8	–	9	34	56	120	81
00 to $9,999	11	17	91	30	65	2	8	6	10	–	8	23	94	136	73
000 to $14,999	206	99	485	15	72	5	45	8	23	6	10	101	157	412	47
000 to $19,999	618	148	422	3	23	1	29	2	7	11	9	73	137	189	11
000 to $24,999	423	71	198	1	3	1	10	3	2	12	3	24	72	127	5
000 to $34,999	307	47	128	–	5	–	3	–	–	15	1	24	66	94	1
000 to $49,999	30	9	63	–	–	–	1	–	–	6	1	2	15	14	2
000 or more	19	–	36	–	2	–	–	–	–	–	–	1	5	2	2
:ian	$19 700	$16 900	$16 000	$8 900	$8 400	$6 900	$14 500	$7 900	$10 600	$23 300	$9 500	$13 700	$13 800	$12 600	$7 600
NTRACT RENT															
Specified renter occupied units[2]	249	217	247	123	177	9	23	18	13	...	47	74	462	362	165
: than $30	1	2	3	4	20	3	1	–	–	...	14	4	13	13	21
to $39	1	1	3	2	57	2	–	1	–	...	7	–	6	16	65
to $59	2	4	32	80	63	3	1	5	5	...	12	12	31	54	67
to $79	8	13	40	23	25	1	4	8	2	...	6	16	80	57	4
to $99	8	13	33	2	3	–	4	1	3	...	3	5	25	60	1
0 to $149	75	83	93	12	–	–	10	2	2	...	1	18	90	78	–
0 to $199	139	95	28	–	–	–	1	–	–	...	1	13	185	18	–
0 to $249	2	–	1	–	–	–	–	–	–	...	–	–	4	–	–
0 or more	1	–	–	–	–	–	–	–	–	...	–	–	–	1	–
:ash rent	12	6	14	–	9	–	2	1	1	...	3	6	28	65	7
:ar	$158	$146	$102	$49	$41	$38	$102	$68	$70	...	$41	$93	$137	$82	$39

[1]Limited to one-family homes on less than 10 acres and no business on property. [2]Excludes one-family homes on 10 acres or more.

Table H-1. Occupancy, Utilization, and Financial Characteristics of Housing Units: 1970—Continued

(For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Census Tracts	Balance of Escambia County—Con.														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
All housing units	**910**	**1 439**	**1 627**	**1 134**	**1 193**	**2 469**	**2 383**	**2 696**	**–**	**448**	**636**	**990**	**1 361**	**2 072**	**1 738**
Vacant—seasonal and migratory	–	2	–	1	3	3	–	1	–	–	1	43	–	1	–
All year-round housing units	**910**	**1 437**	**1 627**	**1 133**	**1 190**	**2 466**	**2 385**	**2 695**	**–**	**448**	**635**	**947**	**1 361**	**2 071**	**1 738**
TENURE, RACE, AND VACANCY STATUS															
Owner occupied	496	847	1 023	680	738	1 404	1 172	1 501	–	–	160	633	850	1 610	1 260
Cooperative and condominium	8	7	–	–	10	8	–	–	–	–	–	–	6	5	5
White	74	673	943	679	526	1 394	1 141	1 457	–	–	160	624	661	1 598	1 255
Negro	421	169	80	–	211	7	26	39	–	–	–	6	183	4	2
Renter occupied	325	485	484	368	337	834	973	1 005	–	444	219	197	378	380	393
White	79	250	439	366	267	822	790	950	–	413	219	194	317	375	389
Negro	245	231	44	–	65	7	63	43	–	16	–	–	59	3	1
Vacant year-round	89	105	120	85	115	228	240	189	–	4	256	117	133	81	77
For sale only	5	13	24	17	4	35	16	23	–	–	8	1	19	28	25
Vacant less than 6 months	2	7	15	14	...	25	11	13	–	–	5	...	16	21	17
Median price asked	$5000–	$8 800	$6 100	$8 800	...	$8 200	$11 300	$13 500	–	–	$29 000	...	$6 000	$11 300	$10 700
For rent	57	60	57	47	87	77	182	128	–	1	57	39	63	26	28
Vacant less than 2 months	32	27	21	24	46	39	140	66	–	...	49	8	38	15	12
Median rent asked	$39	$54	$60	$65	$55	$74	$66	$93	–	...	$139	$79	$62	$100	$90
Other	27	32	39	21	24	116	42	38	–	3	191	77	51	27	24
LACKING SOME OR ALL PLUMBING FACILITIES															
All units	**300**	**138**	**104**	**22**	**133**	**28**	**22**	**22**	**–**	**–**	**4**	**21**	**121**	**13**	**3**
Owner occupied	111	72	57	11	68	13	10	13	–	–	2	11	52	8	2
Negro	104	41	8	–	45	–	5	5	–	–	–	–	35	–	–
Renter occupied	139	40	26	8	42	10	7	5	–	–	2	7	26	4	–
Negro	136	23	5	–	36	1	3	2	–	–	–	–	17	–	–
Vacant year-round	50	26	21	3	23	5	5	4	–	–	–	3	43	1	1
For sale only	2	4	6	1	–	–	1	–	–	–	–	–	2	–	–
For rent	32	10	7	–	17	2	–	1	–	–	–	1	17	–	–

Census Tracts	Balance of Escambia County – Con.														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
COMPLETE KITCHEN FACILITIES AND ACCESS															
Lacking complete kitchen facilities	201	72	57	26	56	31	25	14	–	–	4	9	92	28	15
Access only through other living quarters	–	1	–	–	–	–	–	2	–	–	–	–	–	–	–
ROOMS															
1 room	26	7	8	8	14	13	15	11	–	2	4	8	6	6	5
2 rooms	57	38	63	46	46	65	58	60	–	14	27	35	28	18	17
3 rooms	173	150	168	134	227	273	262	337	–	31	55	96	144	103	66
4 rooms	232	421	434	304	314	714	682	509	–	79	180	223	411	306	381
5 rooms	207	475	503	349	320	690	679	683	–	108	204	268	379	647	608
6 rooms	153	239	323	204	201	475	446	618	–	139	82	184	256	534	482
7 rooms	38	78	97	61	51	175	182	299	–	51	44	76	105	268	126
8 rooms	20	20	26	21	11	46	36	115	–	11	23	44	27	136	31
9 rooms or more	4	9	5	6	6	15	25	63	–	13	16	13	5	53	14
Median	4.4	4.7	4.8	4.7	4.5	4.7	4.8	5.1	–	5.4	4.8	4.9	4.7	5.4	5.2
All occupied housing units	**821**	**1 332**	**1 507**	**1 048**	**1 075**	**2 238**	**2 145**	**2 506**	–	**444**	**379**	**830**	**1 228**	**1 990**	**1 653**
PERSONS															
1 person	143	150	263	193	176	318	296	391	–	5	76	106	155	146	161
2 persons	187	364	501	382	308	794	628	987	–	59	141	301	373	535	436
3 persons	120	234	298	206	206	484	453	530	–	98	83	147	257	416	349
4 persons	124	213	174	122	156	335	368	317	–	93	42	111	182	440	326
5 persons	65	147	133	74	94	161	217	149	–	76	18	86	128	246	208
6 persons or more	182	224	138	71	135	146	183	132	–	113	19	79	133	207	173
Median all occupied units	3.2	3.1	2.5	2.4	2.8	2.5	2.8	2.4	–	4.1	2.3	2.6	2.8	3.3	3.2
Median owner occupied units	3.5	3.0	2.5	2.3	3.1	2.6	2.7	2.5	–	–	2.4	2.7	2.9	3.4	3.2
Median renter occupied units	2.6	3.5	2.5	2.5	2.2	2.4	2.9	2.3	–	4.1	2.2	2.3	2.7	2.7	3.2
Units with roomers, boarders, or lodgers	22	36	37	19	10	43	22	31	–	–	49	9	15	10	18
PERSONS PER ROOM															
1.00 or less	607	1 101	1 357	982	929	2 107	1 955	2 422	–	389	360	770	1 110	1 888	1 527
1.01 to 1.50	112	169	111	42	102	110	134	59	–	46	17	50	89	87	108
1.51 or more	102	62	39	24	44	21	56	25	–	9	2	10	29	15	18
Units with all plumbing facilities – 1.01 or more	140	202	135	64	119	131	185	81	–	55	19	58	102	100	125

Census Tracts

	Balance of Escambia County—Con.													
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 002
VALUE															
Specified owner occupied units[1]	445	755	928	604	569	1 242	1 134	1 396	–	–	156	491	704	1 506	1 16
Less than $5,000	134	164	258	117	131	70	43	45	–	–	–	28	154	32	3
$5,000 to $7,499	113	173	241	144	110	180	114	95	–	–	2	58	168	79	14
$7,500 to $9,999	82	159	175	142	94	327	242	212	–	–	7	59	139	182	25
$10,000 to $14,999	76	176	192	135	178	449	569	531	–	–	43	112	138	447	50
$15,000 to $19,999	25	61	52	53	40	136	131	209	–	–	36	75	59	260	16
$20,000 to $24,999	9	9	6	5	5	41	26	93	–	–	15	54	27	204	3
$25,000 to $34,999	3	9	4	7	6	32	5	94	–	–	22	64	15	263	1
$35,000 to $49,999	2	4	–	1	3	6	3	57	–	–	21	29	2	37	
$50,000 or more	1	–	–	–	2	1	1	60	–	–	10	12	2	2	
Median	$7 000	$8 100	$7 100	$8 200	$8 700	$10 400	$11 200	$13 000	–	–	$18 500	$14 500	$8 000	$15 200	$11 40
CONTRACT RENT															
Specified renter occupied units[2]	318	469	481	367	332	834	937	1 004	–	441	218	191	372	376	39
Less than $30	40	14	14	11	18	21	75	16	–	1	26	6	21	8	
$30 to $39	90	38	29	12	18	10	51	4	–	–	1	3	11	3	
$40 to $59	105	215	175	96	63	97	265	68	–	7	8	14	65	25	3
$60 to $79	16	110	155	143	124	228	223	217	–	16	11	49	91	57	11
$80 to $99	4	45	42	47	41	209	134	249	–	–	24	26	81	119	10
$100 to $149	13	20	18	32	46	145	170	256	–	61	87	41	68	106	11
$150 to $199	30	–	1	1	2	93	5	89	–	9	45	21	8	27	
$200 to $249	–	–	–	–	–	1	–	34	–	–	9	8	–	9	
$250 or more	–	2	–	–	–	–	1	32	–	–	3	1	1	4	
No cash rent	20	25	47	25	20	30	13	39	–	347	4	22	26	18	1
Median	$42	$55	$60	$66	$71	$84	$65	$95	–	$112	$121	$87	$77	$93	$8

[1]Limited to one-family homes on less than 10 acres and no business on property. [2]Excludes one-family homes on 10 acres or more.

Table H-1 Occupancy, Utilization, and Financial Characteristics of Housing Units: 1970—Continued

[For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Balance of Escambia County—Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
All housing units	**2 008**	**1 345**	**1 917**	**2 375**	**1 393**	**2 580**	**2 629**	**1 063**	**918**	**1 208**	**1 340**	**722**	**1 183**	**327**	**943**
Vacant—seasonal and migratory	–	–	1	1	–	2	2	1	–	7	–	2	–	–	–
All year-round housing units	**2 008**	**1 345**	**1 916**	**2 374**	**1 393**	**2 578**	**2 627**	**1 062**	**918**	**1 201**	**1 340**	**720**	**1 183**	**327**	**943**
TENURE, RACE, AND VACANCY STATUS															
Owner occupied	1 513	1 151	1 566	1 880	1 069	2 008	2 151	815	709	931	939	545	859	272	279
Cooperative and condominium	–	–	13	–	–	6	5	5	5	–	6	–	–	–	–
White	1 482	1 134	925	1 868	957	1 797	2 071	601	634	839	662	543	859	271	279
Negro	22	12	636	5	104	205	69	212	70	86	276	–	–	–	–
Renter occupied	395	144	287	382	258	472	394	190	136	199	315	125	205	27	644
White	390	137	169	378	243	411	377	102	101	164	172	124	194	24	602
Negro	4	4	117	1	12	49	17	88	32	33	143	1	11	3	20
Vacant year-round	100	50	63	112	66	98	82	57	73	71	86	50	119	28	20
For sale only	39	17	15	28	25	21	21	10	3	5	15	1	46	1	2
Vacant less than 6 months	27	16	14	20	17	21	18	10	...	–	11	...	22	...	...
Median price asked	$15 000	$16 000	$13 800	$11 900	$13 600	$19 200	$14 100	$10 600	...	...	$5 600	...	$5000–	...	...
For rent	38	9	39	56	29	48	38	29	57	18	12	18	24	5	4
Vacant less than 2 months	20	8	13	26	18	22	17	12	45	2	1	3	2	3	...
Median rent asked	$85	$115	$48	$80	$69	$63	$58	$48	$45	$30–	$30–	$38	$48	...	...
Other	23	24	9	28	12	29	23	18	13	48	59	31	49	22	14
LACKING SOME OR ALL PLUMBING FACILITIES															
All units	**35**	**14**	**199**	**72**	**38**	**188**	**118**	**184**	**167**	**258**	**427**	**149**	**174**	**41**	**28**
Owner occupied	22	11	107	49	29	129	82	99	94	143	222	90	69	22	9
Negro	13	5	83	–	5	74	38	87	37	49	146	–	–	–	–
Renter occupied	6	2	72	20	5	40	24	68	52	73	156	35	49	8	16
Negro	...	...	67	–	3	29	10	63	29	28	119	–	9	...	–
Vacant year-round	7	1	20	3	4	19	12	17	21	42	49	24	56	11	3
For sale only	–	–	1	1	3	–	1	–	...	3	10	...	24	–	–
For rent	7	1	16	–	1	13	3	8	16	12	8	12	15	1	–

Census Tracts	Balance of Escambia County – Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 010
COMPLETE KITCHEN FACILITIES AND ACCESS															
Lacking complete kitchen facilities	68	22	125	31	23	103	80	146	107	142	311	80	135	13	
Access only through other living quarters	–	–	–	–	–	–	–	1	–	–	1	–	1	–	
ROOMS															
1 room	7	1	4	17	4	16	14	4	7	7	9	3	5	2	
2 rooms	15	–	33	30	18	35	45	12	16	32	28	21	12	8	
3 rooms	72	15	127	124	97	163	155	78	69	71	135	45	72	14	7
4 rooms	282	67	335	484	367	451	546	298	204	246	314	143	237	56	29
5 rooms	645	656	648	837	426	754	650	274	268	351	372	248	351	92	30
6 rooms	618	458	527	546	322	635	623	253	225	345	307	175	313	95	19
7 rooms	286	126	189	229	113	333	358	110	84	100	126	62	141	41	5
8 rooms	59	19	38	71	36	141	149	20	27	42	31	17	34	16	1
9 rooms or more	24	3	15	36	10	50	87	13	18	7	18	6	18	3	
Median	5.5	5.4	5.2	5.1	5.0	5.3	5.4	5.0	5.1	5.2	5.0	5.1	5.3	5.4	4.8
All occupied housing units	**1 908**	**1 295**	**1 853**	**2 262**	**1 327**	**2 480**	**2 545**	**1 005**	**845**	**1 130**	**1 254**	**670**	**1 064**	**299**	**92**
PERSONS															
1 person	117	30	126	183	119	209	185	94	98	157	229	69	137	26	3
2 persons	480	216	392	624	384	623	648	223	264	341	337	216	314	73	28
3 persons	415	323	353	427	277	482	499	202	140	160	191	122	207	44	24
4 persons	389	370	371	456	259	587	559	165	127	181	190	113	191	64	16
5 persons	297	221	245	302	139	318	337	129	95	131	114	73	116	42	10
6 persons or more	210	135	366	270	149	261	317	192	121	160	193	77	99	50	9
Median, all occupied units	3.4	3.7	3.6	3.3	3.1	3.3	3.4	3.4	2.9	2.9	2.8	2.9	2.9	3.6	3.1
Median, owner occupied units	3.4	3.7	3.7	3.4	3.2	3.5	3.5	3.4	3.0	2.9	2.8	2.9	2.9	3.6	2.9
Median, renter occupied units	3.3	3.8	3.3	2.7	2.6	2.7	2.6	3.6	2.8	2.9	3.0	2.8	3.0	4.4	3.1
Units with roomers, boarders, or lodgers	21	7	31	34	21	40	27	14	4	6	11	5	10	1	
PERSONS PER ROOM															
1.00 or less	1 770	1 217	1 531	2 065	1 196	2 273	2 324	826	737	987	1 069	603	980	263	84
1.01 to 1.50	116	72	205	160	99	149	170	104	79	102	126	44	65	29	6
1.51 or more	22	6	117	37	32	58	51	75	29	41	59	23	19	7	1
Units with all plumbing facilities – 1.01 or more	129	76	246	179	119	160	186	106	67	92	83	44	66	27	7

Census Tracts	Balance of Escambia County – Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
VALUE															
Specified owner occupied units[1]	**1 432**	**1 099**	**1 409**	**1 492**	**863**	**1 786**	**1 606**	**698**	**363**	**541**	**729**	**225**	**476**	**137**	**73**
Less than $5 000	25	15	172	119	115	174	197	131	127	214	382	103	139	19	16
$5 000 to $7 499	98	22	148	151	142	166	169	183	79	133	168	43	117	15	20
$7 500 to $9 999	156	138	144	241	116	186	155	107	48	61	74	26	51	21	9
$10 000 to $14 999	577	549	524	503	255	459	372	161	63	92	60	34	95	40	12
$15 000 to $19 999	368	301	316	296	150	350	266	70	30	25	25	16	53	26	10
$20 000 to $24 999	140	57	71	117	43	197	148	33	10	5	6	3	16	10	2
$25 000 to $34 999	57	15	26	56	37	183	157	9	2	7	8	–	4	6	4
$35 000 to $49 999	8	2	7	7	5	55	112	3	4	4	4	–	1	–	–
$50 000 or more	3	–	1	2	–	16	30	1	–	–	2	–	–	–	–
Median	$13 800	$13 300	$12 300	$11 900	$11 100	$14 100	$13 600	$8 300	$6 700	$6 100	$5000 –	$5 600	$7 100	$11 800	$7 600
CONTRACT RENT															
Specified renter occupied units[2]	**394**	**144**	**279**	**370**	**254**	**467**	**359**	**183**	**89**	**142**	**281**	**67**	**142**	**7**	**619**
Less than $30	10	2	29	13	7	23	21	49	21	42	138	14	17	–	9
$30 to $39	–	2	36	2	3	15	14	16	9	16	30	8	20	1	8
$40 to $59	12	5	40	22	39	73	51	41	16	20	41	18	29	2	42
$60 to $79	53	10	23	85	89	102	83	30	14	5	5	6	15	2	12
$80 to $99	80	21	35	77	51	56	51	15	–	–	3	–	2	–	17
$100 to $149	183	81	80	114	42	120	70	6	1	–	–	–	2	–	75
$150 to $199	34	18	20	22	3	31	17	–	–	–	–	–	–	–	5
$200 to $249	–	1	–	–	–	6	–	–	–	–	–	–	–	–	–
$250 or more	–	–	–	–	–	1	1	–	–	–	–	–	–	–	–
No cash rent	22	4	16	35	20	40	51	26	28	59	64	21	57	2	451
Median	$108	$121	$83	$90	$75	$80	$75	$46	$41	$30	$30 –	$41	$43	$55	$96

[1]Limited to one-family homes on less than 10 acres and no business on property. [2]Excludes one-family homes on 10 acres or more

Table H-1. Occupancy, Utilization, and Financial Characteristics of Housing Units: 1970—Continued

[For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Santa Rosa County—Con.					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
All housing units	**982**	**2 279**	**2 356**	**2 022**	**1 337**	**1 799**	**2 416**	**2 063**	**2 081**	**1 050**	**942**	**1 762**	**1 196**	**2 547**	**2 634**
Vacant—seasonal and migratory	1	3	5	32	1	–	2	–	1	–	–	–	1	3	2
All year-round housing units	**981**	**2 276**	**2 351**	**1 990**	**1 336**	**1 799**	**2 414**	**2 063**	**2 080**	**1 050**	**942**	**1 762**	**1 195**	**2 544**	**2 632**
TENURE, RACE, AND VACANCY STATUS															
Owner occupied	690	1 418	1 653	1 262	913	743	2 006	1 289	1 430	613	517	1 125	718	1 465	2 058
Cooperative and condominium	–	–	–	5	–	8	–	–	–	–	8	–	–	8	6
White	652	1 269	1 575	1 184	912	90	2 002	1 272	1 232	45	77	1 045	717	1 454	1 847
Negro	37	145	72	75	–	653	1	16	193	568	439	80	–	7	205
Renter occupied	240	609	511	315	279	914	327	685	496	349	334	507	386	847	476
White	228	514	486	292	278	51	327	679	326	11	79	462	384	835	415
Negro	6	92	22	21	–	863	–	2	167	338	254	44	–	7	49
Vacant year-round	51	249	187	413	144	142	81	89	154	88	91	130	91	232	98
For sale only	9	54	26	54	31	2	40	14	11	3	6	29	17	36	21
Vacant less than 6 months	7	47	17	37	25	...	36	11	4	...	3	16	14	26	21
Median price asked	$15 900	$12 700	$9 000	$8 400	$25 900	...	$22 000	$12 500	$11 600	...	$5000–	$7 000	$8 800	$8 300	$19 200
For rent	14	155	72	70	83	85	17	53	113	77	58	59	50	78	48
Vacant less than 2 months	14	112	47	45	51	37	6	31	88	23	32	21	26	39	22
Median rent asked	$60	$85	$67	$69	$165	$36	$153	$106	$128	$38	$39	$61	$65	$74	$63
Other	28	40	89	289	30	55	24	22	30	8	27	42	24	118	29
LACKING SOME OR ALL PLUMBING FACILITIES															
All units	**72**	**184**	**227**	**220**	**4**	**297**	**19**	**21**	**82**	**277**	**310**	**105**	**22**	**38**	**188**
Owner occupied	41	70	148	99	–	78	16	13	45	89	116	58	11	15	129
Negro	11	46	39	27	–	74	–	1	27	84	109	8	–	–	74
Renter occupied	23	81	47	41	–	179	3	5	32	157	143	26	8	10	40
Negro	1	52	19	17	–	176	–	...	21	157	140	5	–	1	29
Vacant year-round	8	33	32	80	4	40	–	3	5	31	51	21	3	5	19
For sale only	–	4	5	19	–	–	–	1	–	–	2	6	1	–	–
For rent	2	21	5	15	–	27	–	1	5	28	33	7	–	2	13

Census Tracts	Santa Rosa County – Con.					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
COMPLETE KITCHEN FACILITIES AND ACCESS															
Lacking complete kitchen facilities	41	102	113	136	8	108	2	13	38	94	204	57	26	32	103
Access only through other living quarters	–	–	–	–	–	7	–	–	1	4	–	–	–	–	–
ROOMS															
1 room	5	22	27	26	1	39	2	5	3	11	26	9	8	14	16
2 rooms	30	52	70	88	10	95	9	36	25	55	62	70	49	65	35
3 rooms	73	239	223	236	30	424	44	216	115	214	180	187	141	277	163
4 rooms	217	378	630	528	172	464	191	587	419	260	240	444	316	723	451
5 rooms	219	754	661	554	306	367	707	473	720	228	212	524	364	723	764
6 rooms	238	536	492	348	367	245	816	433	509	174	155	356	222	494	646
7 rooms	131	192	166	140	218	109	460	200	200	74	42	127	67	185	353
8 rooms	45	67	51	49	148	37	141	78	57	23	21	36	22	48	150
9 rooms or more	23	36	31	21	84	19	44	35	32	11	4	9	6	15	54
Median	5.3	5.1	4.8	4.7	5.9	4.2	5.8	4.9	5.2	4.4	4.3	4.8	4.7	4.8	5.4
All occupied housing units	**930**	**2 027**	**2 164**	**1 577**	**1 192**	**1 657**	**2 333**	**1 974**	**1 926**	**962**	**851**	**1 632**	**1 104**	**2 312**	**2 534**
PERSONS															
1 person	81	265	272	185	75	310	124	237	180	186	149	288	205	325	211
2 persons	228	582	660	497	310	390	498	701	475	223	197	547	407	820	627
3 persons	202	387	401	279	234	272	534	404	397	141	121	321	217	499	494
4 persons	186	347	343	226	281	216	640	304	376	137	127	194	127	344	609
5 persons	119	236	251	186	163	154	327	194	235	74	67	139	74	170	328
6 persons or more	114	210	237	204	129	315	210	134	263	201	190	143	74	154	265
Median all occupied units	3.3	2.9	2.9	2.9	3.4	3.0	3.5	2.6	3.3	3.0	3.2	2.5	2.4	2.5	3.4
Median owner occupied units	3.5	3.2	3.1	3.0	3.6	2.6	3.6	3.1	3.3	3.1	3.5	2.5	2.3	2.6	3.5
Median renter occupied units	2.7	2.4	2.4	2.6	2.6	3.2	2.9	2.2	3.3	2.8	2.6	2.5	2.5	2.4	2.7
Units with roomers, boarders, or lodgers	11	28	27	10	7	50	24	26	29	42	22	42	21	43	42
PERSONS PER ROOM															
1.00 or less	842	1 856	1 944	1 374	1 146	1 249	2 241	1 892	1 708	746	627	1 481	1 036	2 175	2 326
1.01 to 1.50	64	126	160	148	42	218	84	76	169	116	116	111	44	116	150
1.51 or more	24	45	60	55	4	190	8	6	49	100	108	40	24	21	58
Units with all plumbing facilities – 1.01 or more	75	137	172	170	46	337	91	81	195	146	147	136	66	137	161

Census Tracts

	Santa Rosa County—Con.					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
VALUE															
Specified owner occupied units[1]	**509**	**1 295**	**1 189**	**954**	**887**	**687**	**1 946**	**1 078**	**1 233**	**569**	**466**	**1 026**	**640**	**1 299**	**1 836**
Less than $5,000	77	99	249	171	3	155	37	74	78	109	140	258	129	77	174
$5,000 to $7,499	59	168	227	147	–	214	47	67	132	149	119	243	149	188	166
$7,500 to $9,999	30	208	171	120	2	130	34	111	166	138	84	183	148	337	186
$10,000 to $14,999	79	487	283	169	102	114	307	256	427	119	81	237	143	472	465
$15,000 to $19,999	122	195	154	143	244	47	691	285	192	34	26	81	55	143	361
$20,000 to $24,999	93	72	70	83	141	13	447	143	128	8	10	16	8	43	209
$25,000 to $34,999	43	49	29	78	193	9	331	113	94	6	3	7	7	32	198
$35,000 to $49,999	2	16	4	32	143	4	32	24	14	2	2	1	1	6	61
$50,000 or more	4	1	2	11	59	1	20	5	2	4	1	–	–	1	16
Median	$15 500	$11 600	$9 200	$11 000	$23 300	$7 200	$19 000	$15 500	$12 300	$8 000	$7 000	$7 700	$8 200	$10 400	$14 300
CONTRACT RENT															
Specified renter occupied units[2]	**226**	**605**	**492**	**295**	**276**	**856**	**323**	**679**	**485**	**342**	**327**	**504**	**385**	**847**	**471**
Less than $30	8	72	35	31	11	95	5	15	17	41	43	15	11	21	23
$30 to $39	11	33	19	10	–	176	1	7	18	122	92	29	13	10	15
$40 to $59	34	75	84	44	3	438	14	35	134	130	108	176	101	102	73
$60 to $79	59	78	108	81	8	92	24	93	80	29	17	159	151	230	102
$80 to $99	31	59	75	26	9	12	13	38	62	4	4	46	48	212	57
$100 to $149	50	180	94	43	84	5	93	173	90	–	13	28	34	147	121
$150 to $199	5	44	3	11	114	2	152	280	18	–	30	2	1	93	32
$200 to $249	–	–	–	1	31	–	2	4	–	–	–	–	–	1	7
$250 or more	–	–	–	–	2	–	1	–	1	–	–	–	–	–	1
No cash rent	28	63	74	48	14	36	18	34	65	16	20	49	26	31	40
Median	$76	$83	$71	$68	$157	$45	$151	$142	$69	$40	$42	$61	$66	$84	$81

[1]Limited to one-family homes on less than 10 acres and no business on property. [2]Excludes one-family homes on 10 acres or more.

Table H-2. Structural, Equipment, and Financial Characteristics of Housing Units: 1970

[Data based on sample, see text. For maximum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
All year-round housing units	77 164	65 985	51 847	44 838	12 879	116	1 692	1 756	1 681	925	1 892	1 168	2 488	1 377	2 322
UNITS IN STRUCTURE															
1 (includes mobile home or trailer)	68 394	57 275	17 158	40 117	11 119	27	1 051	1 508	1 340	720	1 429	804	1 907	1 235	1 962
2	3 068	2 705	1 108	1 597	363	10	147	136	82	87	210	69	190	37	18
3 and 4	1 714	1 593	886	707	121	43	226	26	44	48	151	128	140	52	5
5 to 49	2 840	2 567	1 343	1 224	273	36	268	37	206	61	97	167	124	48	38
50 or more	1 148	945	552	393	203	–	–	49	9	9	5	–	47	5	309
YEAR STRUCTURE BUILT															
1969 to March 1970	3 846	3 000	620	2 380	846	–	36	12	23	–	–	12	19	14	52
1965 to 1968	10 470	8 358	1 944	6 414	2 112	6	61	83	60	9	49	5	97	–	529
1960 to 1964	12 240	9 357	2 388	6 969	2 883	6	31	95	55	29	15	5	80	48	661
1950 to 1959	22 535	19 456	4 524	14 932	3 079	13	82	462	220	170	80	68	405	425	629
1940 to 1949	13 675	12 255	3 891	8 364	1 420	18	212	459	644	241	410	296	537	352	204
1939 or earlier	14 398	12 659	7 680	4 979	1 739	73	1 270	645	679	476	1 338	782	1 270	538	257
HEATING EQUIPMENT															
Steam or hot water	1 014	555	356	199	459	36	28	13	49	82	9	10	24	77	17
Warm air furnace	24 731	20 226	6 663	13 563	4 505	–	102	205	58	230	54	17	414	529	1 542
Built-in electric units	2 588	2 265	720	1 545	323	–	17	52	79	3	43	11	133	40	154
Floor, wall, or pipeless furnace	11 485	10 994	3 849	7 145	491	–	207	465	137	228	119	68	1 042	550	258
Other means or not heated	37 346	31 045	9 459	21 586	6 301	80	1 338	1 021	1 358	382	1 667	1 062	795	181	361
BASEMENT															
All units with basement	2 343	2 035	1 140	895	308	6	67	50	27	106	37	16	193	298	103
One-family houses with basement	1 956	1 667	864	803	289	–	23	38	22	75	21	10	114	252	90

ensus Tracts	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
SELECTED EQUIPMENT															
With more than 1 bathroom	22 190	18 279	7 067	11 212	3 911	6	152	295	90	358	169	63	686	652	1 428
With public water supply	65 562	58 956	20 987	37 969	6 606	109	1 691	1 760	1 681	920	1 886	1 165	2 408	1 377	2 321
With public sewer	34 713	31 307	19 426	11 881	3 406	109	1 683	1 632	1 577	914	1 845	1 165	2 389	1 363	2 213
With air conditioning	45 955	39 027	12 058	26 969	6 928	43	468	1 038	256	609	271	158	1 482	1 178	2 101
Room unit(s)	29 785	25 894	7 062	18 832	3 891	43	358	836	212	497	236	152	1 178	806	639
Central system	16 170	13 133	4 996	8 137	3 037	–	110	202	44	112	35	6	304	372	1 462
All occupied housing units	71 233	60 387	19 324	41 063	10 846	99	1 469	1 594	1 556	781	1 653	1 023	2 394	1 301	2 200
YEAR MOVED INTO UNIT															
968 to March 1970	27 012	22 433	6 388	16 045	4 579	38	587	494	438	182	516	341	571	285	877
965 to 1967	12 217	10 353	3 814	7 239	1 864	27	211	165	232	114	267	130	286	123	466
960 to 1964	11 522	9 767	3 129	6 638	1 755	21	161	190	267	79	275	217	278	170	326
950 to 1959	11 387	9 923	3 014	6 909	1 464	7	131	348	214	193	160	91	304	358	382
949 or earlier	9 095	7 911	3 679	4 232	1 184	6	379	397	405	213	435	244	765	365	149
AUTOMOBILES AVAILABLE															
	34 187	28 349	8 109	20 240	5 838	38	595	827	645	304	673	445	1 163	600	733
	23 021	19 921	5 910	14 011	3 100	18	134	438	165	269	116	83	562	518	1 160
or more	4 310	3 716	1 080	2 636	594	–	44	105	21	58	6	12	94	92	228
one	9 715	8 401	4 225	4 176	1 314	43	696	224	725	150	858	483	385	91	79
GROSS RENT															
Specified renter occupied units[1]	20 157	17 382	6 563	10 819	2 775	79	848	528	792	199	859	650	722	250	576
ess than $40	825	741	384	357	84	5	47	5	71	–	106	128	5	–	–
40 to $59	2 806	2 592	1 433	1 159	214	5	202	37	345	40	274	303	75	–	5
60 to $79	3 280	2 866	1 446	1 420	414	16	283	109	238	65	247	94	208	40	38
80 to $99	3 036	2 718	847	1 871	318	–	168	141	58	15	131	57	100	24	43
100 to $149	4 571	3 983	875	3 108	588	18	66	92	40	53	70	15	215	117	45
150 to $199	2 721	2 372	908	1 464	349	22	44	88	5	3	–	5	57	19	288
200 to $249	619	524	213	311	95	–	10	13	–	5	–	–	10	12	77
250 or more	120	113	41	72	7	–	5	–	–	12	–	–	5	–	15
o cash rent	2 179	1 473	416	1 057	706	13	23	43	35	6	31	48	47	38	65
Aedian	$93	$92	$77	$101	$100	$125	$70	$90	$57	$77	$63	$49	$91	$120	$172

ensus Tracts

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0001	Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0009	Tract 0010
ROSS RENT AS PERCENTAGE OF INCOME BY INCOME															
Specified renter occupied units[1]	20 157	17 382	6 563	10 819	2 775	79	848	528	792	199	859	650	722	258	576
ss than $5,000	9 612	8 350	3 583	4 767	1 262	43	582	218	517	86	600	464	362	77	205
Less than 20 percent	1 156	1 027	578	449	129	5	21	23	129	13	134	133	50	–	9
20 to 24 percent	871	785	418	367	86	4	100	8	60	7	68	72	37	6	14
25 to 34 percent	1 873	1 678	681	997	195	–	123	25	96	14	130	107	93	17	12
35 percent or more	4 221	3 757	1 558	2 199	464	21	295	129	191	46	219	131	162	42	122
Not computed	1 491	1 103	348	755	388	13	43	33	41	6	49	21	20	12	48
Median	35.0+	35.0+	34.1	35.0+	35.0+	35.0+	35.0+	35.0+	30.1	35.0+	30.7	26.5	34.0	35.0+	35.0+
5,000 to $9,999	7 412	6 400	2 118	4 282	1 012	22	186	247	249	89	224	162	255	115	207
Less than 20 percent	3 801	3 420	1 252	2 168	381	12	138	140	210	55	201	131	128	55	21
20 to 24 percent	1 290	1 122	299	823	168	5	37	44	19	15	5	5	70	24	30
25 to 34 percent	1 386	1 198	348	850	188	–	11	35	15	7	6	5	38	25	101
35 percent or more	256	241	97	144	15	5	–	18	–	12	–	–	–	6	38
Not computed	679	419	122	297	260	–	–	10	5	–	12	21	19	5	17
Median	18.8	18.7	17.4	19.2	19.8	...	17.2	18.5	12.5	13.9	13.3	10.0–	19.5	20.0	29.4
0,000 to $14,999	2 293	1 915	601	1 314	378	–	61	63	16	12	25	24	81	51	83
25 percent or more	20	20	5	15	–	–	–	–	–	–	–	–	5	–	–
Not computed	314	215	54	161	99	–	–	14	–	–	–	6	9	14	11
Median	14.5	14.4	14.7	14.3	15.3	–	11.8	10.2	...	...	10.0–	...	13.0	15.1	18.3
5,000 or more	840	717	261	456	123	14	19	–	10	12	10	–	24	7	81
25 percent or more	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not computed	137	122	24	98	15	–	–	–	6	–	–	–	5	7	6
Median	10.6	10.4	10.9	10.0	11.8	...	...	–	...	...	...	–	...	–	13.6

[1]Excludes one-family homes on 10 acres or more.

Table H-2. Structural, Equipment, and Financial Characteristics of Housing Units: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Pensacola – Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Trac 001
All year-round housing units	1 951	750	1 835	278	510	31	136	67	84	58	118	449	1 316	1 784	53
UNITS IN STRUCTURE															
1 (includes mobile home or trailer)	1 866	603	1 757	122	461	25	136	63	84	58	91	414	1 060	1 653	43
2	22	9	45	–	36	6	–	4	–	–	13	35	14	71	4
3 and 4	–	10	–	–	13	–	–	–	–	–	5	–	5	6	2
5 to 49	38	65	19	139	–	–	–	–	–	–	9	–	124	29	2
50 or more	25	63	14	17	–	–	–	–	–	–	–	–	113	25	
YEAR STRUCTURE BUILT															
1969 to March 1970	110	113	26	192	6	–	–	–	–	5	10	31	91	138	1
1965 to 1968	682	172	131	–	15	–	5	6	–	34	4	166	353	323	
1960 to 1964	754	188	349	16	37	4	–	–	5	10	4	68	276	498	4
1950 to 1959	365	226	1 119	59	103	11	24	14	40	9	46	112	286	546	27
1940 to 1949	6	37	151	11	168	11	92	8	34	–	20	16	171	192	12
1939 or earlier	34	14	59	–	181	5	15	39	5		34	56	139	87	5
HEATING EQUIPMENT															
Steam or hot water	–	–	–	–	11	–	–	–	–	–	5	–	6	10	
Warm air furnace	1 652	549	964	187	39	–	39	6	27	49	20	205	625	800	1
Built-in electric units	56	57	44	10	17	4	–	–	–	–	–	22	138	61	
Floor, wall, or pipeless furnace	106	35	435	36	51	5	70	–	28	9	22	50	128	245	3
Other means or not heated	137	109	392	45	392	22	27	61	29	–	71	172	419	668	4
BASEMENT															
All units with basement	27	39	122	11	26	4	4	–	4	–	–	17	35	14	
One-family houses with basement	27	34	117	3	26	4	4	–	4	–	–	17	35	14	

Census Tracts	Pensacola — Con										Balance of Escambia County				
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015
SELECTED EQUIPMENT															
With more than 1 bathroom	1 621	362	996	–	58	–	45	16	21	49	27	148	400	562	31
With public water supply	1 922	723	1 844	281	513	34	144	66	80	62	125	448	1 240	1 606	535
With public sewer	1 507	452	1 651	218	443	7	123	33	59	43	50	80	472	338	106
With air conditioning	1 782	612	1 552	41	155	19	110	51	70	62	67	324	960	1 292	89
Room unit(s)	522	203	964	34	139	19	97	44	70	13	55	193	464	817	82
Central system	1 260	409	588	7	16	–	13	7	–	49	12	131	496	475	7
All occupied housing units	**1 892**	**729**	**1 759**	**201**	**489**	**28**	**138**	**66**	**116**	**62**	**104**	**437**	**1 263**	**1 673**	**499**
YEAR MOVED INTO UNIT															
1968 to March 1970	827	382	493	140	98	15	35	28	13	28	27	187	562	590	89
1965 to 1967	515	132	301	12	92	–	21	7	5	8	5	106	200	387	50
1960 to 1964	395	70	475	15	119	–	29	–	23	19	34	65	231	318	153
1950 to 1959	150	93	400	34	87	6	24	9	16	7	19	58	134	249	128
1949 or earlier	5	52	90	–	93	7	29	22	23	–	19	21	136	129	79
AUTOMOBILES AVAILABLE															
1	574	298	701	60	251	6	88	34	61	13	56	240	620	750	273
2	1 102	311	849	12	52	16	50	15	11	29	10	106	472	666	59
3 or more	190	75	127	–	–	–	–	–	8	20	13	56	100	130	8
None	26	45	82	129	186	6	–	17	–	–	25	35	71	127	159
GROSS RENT															
Specified renter occupied units[1]	**245**	**225**	**236**	**124**	**167**	...	...	...	...	...	**38**	**94**	**437**	**354**	**180**
Less than $40	–	–	–	–	17	...	...	...	...	...	–	–	–	–	8
$40 to $59	10	–	5	84	38	...	...	...	...	...	15	6	11	17	77
$60 to $79	–	10	20	22	45	...	...	...	...	...	9	20	21	25	52
$80 to $99	–	19	45	5	30	...	...	...	...	...	14	15	62	44	24
$100 to $149	10	33	60	6	12	...	...	...	...	...	–	10	116	136	15
$150 to $199	146	137	87	7	–	...	...	...	...	...	–	33	183	59	–
$200 to $249	54	17	15	–	–	...	...	...	...	...	–	5	24	7	–
$250 or more	–	–	–	–	–	...	...	...	...	...	–	–	6	5	–
No cash rent	25	9	4	–	25	...	...	...	...	...	–	5	14	61	4
Median	$181	$167	$136	$52	$68	...	...	...	...	...	$74	$114	$150	$116	$62

Census Tracts

	Pensacola – Con.										Balance of Escambia County			
	Tract 0011	Tract 0012	Tract 0013	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035	Tract 0004	Tract 0011	Tract 0012	Tract 0014
GROSS RENT AS PERCENTAGE OF INCOME BY INCOME														
Specified renter occupied units[1]	**245**	**223**	**236**	**124**	**167**	...	...	...	...	...	**38**	**94**	**437**	**354**
Less than $5,000	53	72	67	106	103	...	...	...	...	...	38	42	125	146
Less than 20 percent	10	–	10	11	26	...	...	...	...	...	5	15	–	–
20 to 24 percent	–	4	4	8	16	...	...	...	...	...	10	–	–	–
25 to 34 percent	–	10	9	36	6	...	...	...	...	...	4	5	25	31
35 percent or more	43	42	44	47	17	...	...	...	...	...	19	12	91	62
Not computed	–	16	–	4	38	...	...	...	...	...	–	10	9	53
Median	35.0+	35.0+	35.0+	33.9	22.0	...	...	...	...	...	35.0	27.0	35.0+	35.0+
$5,000 to $9,999	64	95	106	18	48	...	...	...	...	...	–	35	192	128
Less than 20 percent	–	24	52	18	44	...	...	...	...	...	–	14	50	67
20 to 24 percent	–	17	20	–	–	...	...	...	...	...	–	11	32	27
25 to 34 percent	34	45	26	–	–	...	...	...	...	...	–	4	68	19
35 percent or more	5	9	4	–	–	...	...	...	...	...	–	6	37	5
Not computed	25	–	4	–	4	...	...	...	...	...	–	–	5	10
Median	30.7	26.4	19.8	...	12.3	...	...	...	...	...	–	21.6	26.7	19.2
$10,000 to $14,999	84	43	43	–	11	...	...	...	...	...	–	17	74	64
25 percent or more	–	–	–	–	–	...	...	...	...	...	–	–	–	–
Not computed	–	–	–	–	–	...	...	...	...	...	–	–	–	–
Median	18.1	19.9	16.7	–	...	...	...	...	...	...	–	...	14.6	16.6
$15,000 or more	44	15	20	–	5	...	...	...	...	...	–	–	46	16
25 percent or more	–	–	–	–	–	...	...	...	...	...	–	–	–	–
Not computed	–	–	–	–	–	...	...	...	...	...	–	–	–	4
Median	13.5	...	...	–	...	...	...	...	...	...	–	–	10.0–	...

[1]Excludes one-family homes on 10 acres or more

Table H-2. Structural, Equipment, and Financial Characteristics of Housing Units: 1970—Continued

[Data based on sample. see text For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts	Balance of Escambia County—Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
All year-round housing units	**920**	**1 444**	**1 686**	**1 139**	**1 199**	**2 461**	**2 385**	**2 687**	**–**	**448**	**632**	**956**	**1 364**	**2 072**	**1 748**
UNITS IN STRUCTURE															
1 (includes mobile home or trailer)	750	1 252	1 552	1 028	991	2 107	1 702	2 271	–	85	595	901	1 288	2 000	1 705
2	95	15	25	71	101	122	356	141	–	45	7	11	65	32	29
3 and 4	18	4	14	–	93	54	81	77	–	210	7	–	5	6	8
5 to 49	57	168	15	40	14	173	153	77	–	108	23	38	6	34	–
50 or more	–	5	–	–	–	5	93	121	–	–	–	6	–	–	6
YEAR STRUCTURE BUILT															
1969 to March 1970	4	145	20	9	59	51	21	16	–	19	91	78	77	124	20
1965 to 1968	88	114	60	30	118	262	41	185	–	194	85	167	128	516	109
1960 to 1964	117	178	146	70	165	134	98	193	–	12	113	204	212	410	195
1950 to 1959	373	531	455	305	333	1 080	709	641	–	40	302	260	426	716	1 097
1940 to 1949	205	312	669	412	326	652	1 243	1 238	–	40	20	129	342	172	234
1939 or earlier	133	164	256	313	198	282	273	414	–	143	21	118	179	134	93
HEATING EQUIPMENT															
Steam or hot water	14	5	–	5	–	4	5	17	–	67	–	–	–	5	–
Warm air furnace	76	351	156	138	252	531	435	685	–	261	253	372	293	1 094	399
Built-in electric units	10	58	13	14	23	72	60	92	–	–	81	87	50	79	18
Floor, wall, or pipeless furnace	51	148	186	175	127	731	761	1 054	–	12	137	68	201	297	255
Other means or not heated	769	882	1 251	807	797	1 123	1 124	839	–	108	161	429	820	597	1 076
BASEMENT															
All units with basement	17	26	22	3	4	83	25	75	–	60	28	48	–	28	22
One-family houses with basement	11	26	22	3	4	74	20	55	–	15	21	48	–	28	22

Census Tracts	Balance of Escambia County – Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
SELECTED EQUIPMENT															
With more than 1 bathroom	35	96	102	96	132	445	389	791	–	319	274	399	214	963	494
With public water supply	883	1 242	1 581	1 135	1 160	2 392	2 379	2 675	–	443	626	646	1 293	2 032	1 753
With public sewer	167	426	115	198	240	477	901	686	–	448	323	102	102	351	1 031
With air conditioning	200	629	715	645	546	1 736	1 325	1 941	–	380	491	596	653	1 764	1 275
Room unit(s)	146	565	677	569	455	1 378	1 121	1 303	–	151	276	325	487	906	1 076
Central system	54	64	38	76	91	358	204	638	–	229	215	271	166	858	199
All occupied housing units	**808**	**1 367**	**1 468**	**1 044**	**1 087**	**2 240**	**2 145**	**2 489**	–	**444**	**376**	**841**	**1 238**	**1 996**	**1 673**
YEAR MOVED INTO UNIT															
1968 to March 1970	173	527	469	421	441	1 032	995	1 125	–	402	255	348	530	790	587
1965 to 1967	152	231	234	131	130	253	266	359	–	36	48	116	167	411	355
1960 to 1964	149	166	119	80	171	275	271	280	–	–	43	169	153	346	345
1950 to 1959	223	266	266	142	180	408	353	468	–	–	20	139	140	309	311
1949 or earlier	111	177	380	270	165	272	260	257	–	6	10	69	248	140	75
AUTOMOBILES AVAILABLE															
1	354	687	755	538	627	1 197	1 215	1 381	–	262	118	360	657	895	752
2	128	325	356	331	270	732	549	818	–	177	166	351	316	892	708
3 or more	32	20	87	38	31	110	161	189	–	5	92	79	41	161	131
None	294	335	270	137	159	201	220	101	–	–	–	51	224	48	82
GROSS RENT															
Specified renter occupied units[1]	**330**	**478**	**471**	**367**	**309**	**841**	**928**	**1 019**	–	**444**	**215**	**179**	**378**	**380**	**408**
Less than $40	24	5	–	–	11	–	108	–	–	–	–	–	10	–	–
$40 to $59	120	149	84	34	12	39	266	5	–	6	6	6	28	5	9
$60 to $79	71	128	103	53	69	133	125	104	–	17	–	11	51	11	29
$80 to $99	42	101	122	122	108	159	123	193	–	–	12	38	123	36	74
$100 to $149	25	65	113	110	68	302	249	461	–	39	94	48	89	165	211
$150 to $199	30	–	7	16	25	138	31	143	–	–	98	17	48	87	72
$200 to $249	4	–	–	–	–	44	14	58	–	–	–	23	–	44	4
$250 or more	–	–	–	7	–	–	6	30	–	–	–	7	–	11	–
No cash rent	14	30	42	25	16	26	6	25	–	382	5	29	29	21	9
Median	$63	$70	$86	$93	$90	$110	$70	$114	–	$107	$147	$114	$93	$136	$118

Census Tracts	Balance of Escambia County – Con														
	Tract 0016	Tract 0017	Tract 0018	Tract 0019	Tract 0020	Tract 0021	Tract 0022	Tract 0023	Tract 0023.99	Tract 0024	Tract 0025	Tract 0026	Tract 0027	Tract 0028	Tract 0029
All year-round housing units	**920**	**1 444**	**1 606**	**1 139**	**1 199**	**2 461**	**2 385**	**2 687**	–	**448**	**632**	**956**	**1 364**	**2 872**	**1 748**
GROSS RENT AS PERCENTAGE OF INCOME BY INCOME															
Specified renter occupied units[1]	**330**	**478**	**471**	**367**	**309**	**841**	**928**	**1 019**	–	**444**	**215**	**179**	**378**	**380**	**408**
Less than $5,000	206	302	287	127	182	315	503	349	–	98	84	79	199	107	125
Less than 20 percent	51	28	24	6	11	9	109	10	–	6	–	–	10	–	5
20 to 24 percent	11	16	26	18	9	29	77	18	–	5	–	6	25	–	14
25 to 34 percent	37	59	47	23	56	61	132	92	–	–	–	28	52	33	28
35 percent or more	96	160	128	47	90	188	174	202	–	21	68	15	78	48	78
Not computed	11	39	62	33	16	28	11	27	–	66	16	30	34	26	–
Median	34.6	35.0+	35.0+	35.0	35.0+	35.0+	29.5	35.0+	–	35.0+	35.0+	31.6	34.1	35.0+	35.0+
$5,000 to $9,999	108	129	139	190	105	405	369	450	–	143	79	64	141	176	211
Less than 20 percent	88	105	103	134	85	207	222	208	–	8	25	18	92	62	80
20 to 24 percent	9	7	15	42	–	104	94	110	–	–	12	18	10	28	59
25 to 34 percent	8	17	14	7	20	62	48	89	–	9	35	23	36	63	67
35 percent or more	–	–	–	–	–	10	5	28	–	–	7	–	3	11	–
Not computed	3	–	7	7	–	22	–	15	–	126	–	5	–	12	5
Median	13.4	15.2	17.3	16.8	15.7	19.4	17.2	20.4	–	...	25.7	23.2	17.5	23.6	21.9
$10,000 to $14,999	5	33	45	35	22	87	46	181	–	115	42	11	38	69	67
25 percent or more	–	–	–	–	–	–	–	10	–	–	–	–	–	5	–
Not computed	–	6	5	–	–	–	–	–	–	106	–	–	–	5	4
Median	...	10.0–	10.0–	11.0	...	16.1	11.8	14.3	–	...	15.4	...	14.4	18.5	13.2
$15,000 or more	11	14	–	15	–	34	10	39	–	88	10	25	–	28	5
25 percent or more	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not computed	–	–	–	–	–	–	–	–	–	84	–	6	–	–	–
Median	...	...	–	...	–	10.0–	...	12.6	–	...	...	...	–	12.5	...

[1]Excludes one-family homes on 10 acres or more

Table H-2. Structural, Equipment, and Financial Characteristics of Housing Units: 1970—Continued

(Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Census Tracts	Balance of Escambia County—Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
All year-round housing units	**1 993**	**1 354**	**1 948**	**2 378**	**1 347**	**2 608**	**2 582**	**1 110**	**918**	**1 195**	**1 253**	**738**	**1 164**	**331**	**935**
UNITS IN STRUCTURE															
1 (includes mobile home or trailer)	1 935	1 351	1 907	2 310	1 292	2 478	2 465	1 077	909	1 181	1 228	738	1 152	331	691
2	27	–	32	41	40	61	62	6	4	14	20	–	–	–	59
3 and 4	–	3	–	5	–	30	33	11	5	–	5	–	8	–	50
5 to 49	25	–	9	22	15	33	22	9	–	–	–	–	4	–	135
50 or more	6	–	–	–	–	6	–	7	–	–	–	–	–	–	–
YEAR STRUCTURE BUILT															
1969 to March 1970	57	102	162	286	78	162	281	49	29	87	66	30	36	42	134
1965 to 1968	242	267	435	526	303	622	662	100	130	112	72	72	149	74	146
1960 to 1964	424	316	611	488	237	607	494	209	130	124	189	164	251	56	199
1950 to 1959	1 173	628	623	695	530	750	606	416	242	318	414	165	291	80	147
1940 to 1949	63	21	87	187	109	243	310	278	152	216	181	110	228	34	224
1939 or earlier	34	20	30	196	90	224	229	58	235	338	431	197	209	45	85
HEATING EQUIPMENT															
Steam or hot water	–	–	5	5	11	19	6	10	–	–	–	–	–	–	–
Warm air furnace	689	475	728	1 168	506	1 211	1 165	200	226	124	108	80	184	105	535
Built-in electric units	84	46	70	102	40	87	119	43	39	16	16	20	29	11	24
Floor, wall, or pipeless furnace	383	640	319	266	138	256	186	162	45	30	49	11	39	–	10
Other means or not heated	837	193	826	837	652	1 035	1 106	695	608	1 025	1 180	627	912	215	366
BASEMENT															
All units with basement	11	20	19	57	17	63	61	19	40	51	30	10	28	–	5
One-family houses with basement	11	20	19	57	17	63	61	19	40	51	30	10	28	–	5

Census Tracts	Balance of Escambia County — Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
SELECTED EQUIPMENT															
With more than 1 bathroom	690	545	597	709	262	980	920	161	158	112	161	60	215	113	301
With public water supply	1 940	1 331	1 246	1 250	1 147	2 032	1 621	947	446	783	1 032	8	376	122	561
With public sewer	1 078	1 301	894	860	175	562	185	68	28	21	96	–	11	–	524
With air conditioning	1 584	1 136	971	1 685	821	1 739	1 624	556	338	398	489	186	489	134	560
Room unit(s)	1 192	834	608	1 147	568	1 013	1 001	441	219	348	415	163	414	49	141
Central system	392	302	363	538	253	726	623	115	119	50	74	23	75	85	419
All occupied housing units	**1 877**	**1 295**	**1 887**	**2 265**	**1 243**	**2 525**	**2 483**	**1 067**	**845**	**1 105**	**1 279**	**680**	**1 054**	**329**	**886**
YEAR MOVED INTO UNIT															
1968 to March 1970	713	561	675	1 029	458	1 053	952	294	147	311	302	193	260	115	644
1965 to 1967	409	315	464	416	259	500	524	216	166	115	218	75	187	80	81
1960 to 1964	393	225	444	347	205	474	434	159	195	147	247	116	198	28	24
1950 to 1959	337	181	297	306	279	373	389	259	132	236	307	113	197	48	64
1949 or earlier	25	13	7	167	42	125	184	139	205	296	205	183	212	58	73
AUTOMOBILES AVAILABLE															
1	762	618	1 025	1 244	605	1 029	1 180	522	439	562	517	450	597	231	672
2	863	586	682	832	455	1 065	935	319	238	285	319	60	271	73	146
3 or more	151	84	41	136	100	247	223	86	27	13	44	21	24	–	–
None	101	7	139	53	83	184	145	140	141	245	399	149	162	25	68
GROSS RENT															
Specified renter occupied units[1]	**379**	**142**	**300**	**369**	**213**	**495**	**348**	**202**	**94**	**166**	**261**	**71**	**150**	...	**640**
Less than $40	–	–	32	–	11	13	5	18	5	17	90	–	11	...	–
$40 to $59	4	–	57	8	5	12	12	53	15	42	56	35	31	...	33
$60 to $79	14	–	16	42	40	76	53	56	25	15	51	–	45	...	41
$80 to $99	58	8	32	51	81	80	76	14	24	9	26	10	17	...	18
$100 to $149	163	46	76	178	54	122	103	27	–	19	4	–	6	...	87
$150 to $199	88	61	71	61	12	130	48	6	–	–	–	–	–	...	13
$200 to $249	20	23	9	3	–	29	–	–	–	–	–	–	–	...	–
$250 or more	–	–	–	–	–	–	–	–	–	–	–	–	–	...	–
No cash rent	32	4	7	26	10	33	51	28	25	64	34	26	40	...	448
Median	$131	$162	$104	$119	$89	$114	$101	$64	$67	$55	$45	$56	$68	...	$101

Census Tracts

GROSS RENT AS PERCENTAGE OF INCOME BY INCOME	Balance of Escambia County—Con.											Santa Rosa County			
	Tract 0030	Tract 0031	Tract 0032	Tract 0033	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040	Tract 0101	Tract 0102	Tract 0103	Tract 0104
Specified renter occupied units[1]	379	142	300	369	213	495	348	202	94	166	261	71	150	...	640
Less than $5,000	108	43	164	111	93	214	155	115	51	89	181	40	87	...	270
Less than 20 percent	–	–	36	–	11	8	11	33	5	14	28	6	22	...	25
20 to 24 percent	–	4	6	4	16	6	11	19	–	–	27	–	6	...	5
25 to 34 percent	16	–	39	32	31	47	17	16	–	5	46	12	6	...	25
35 percent or more	60	25	55	52	30	122	85	17	26	42	60	6	24	...	28
Not computed	32	14	28	23	5	31	31	30	20	28	20	16	29	...	187
Median	35.0+	35.0+	31.7	35.0+	30.5	35.0+	35.0+	22.5	35.0+	35.0+	30.5	...	26.7	...	29.6
$5,000 to $9,999	178	69	85	199	97	194	146	63	14	64	58	31	38	...	268
Less than 20 percent	50	8	25	79	56	91	93	52	9	32	54	21	21	...	26
20 to 24 percent	62	27	22	52	31	29	9	4	–	9	–	–	–	...	35
25 to 34 percent	55	30	30	59	–	56	24	7	–	–	–	–	6	...	26
35 percent or more	5	4	8	5	–	10	–	–	–	–	–	–	–	...	–
Not computed	6	–	–	4	10	8	20	–	5	23	4	10	11	...	181
Median	22.9	24.9	24.0	21.8	17.3	20.3	17.2	13.6	...	12.9	12.4	...	13.8	...	22.5
$10,000 to $14,999	75	26	36	40	5	66	42	24	23	9	17	–	25	...	86
25 percent or more	–	–	–	–	–	–	–	–	–	–	–	–	–	...	–
Not computed	–	–	–	4	–	–	5	7	–	9	10	–	–	...	81
Median	15.8	17.5	18.6	15.0	...	15.0	14.9	...	...	–	...	–	10.0–	..	.
$15,000 or more	18	4	15	19	18	21	5	–	6	4	[illegible]	–	–		[illegible]
25 percent or more	–	–	–	–	–	–	–	–	–	–	–	–	–	...	–
Not computed	–	–	–	–	–	–	–	–	–	4	–	–	–	...	4
Median	...	...	...	...	...	...	...	–	...	–	...	–	–	...	...

[1] Excludes one family homes on 10 acres or more

Table H-2. Structural, Equipment, and Financial Characteristics of Housing Units: 1970—Continued

(Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Census Tracts	Santa Rosa County—Con					Totals for split tracts in Escambia County								
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
All year-round housing units	1 800	2 256	2 337	1 981	1 337	1 799	2 600	2 966	2 062	1 034	951	1 742	1 296	2 543	2 666
UNITS IN STRUCTURE															
(includes mobile home or trailer)	979	1 940	2 244	1 918	1 126	1 431	2 280	1 663	1 775	900	775	1 688	1 091	2 191	2 536
	11	168	52	45	28	95	57	23	71	78	101	25	75	122	61
and 4	6	37	20	–	–	49	–	15	6	35	18	14	–	54	30
to 49	4	87	21	18	4	215	38	189	168	21	57	15	40	173	33
50 or more	–	24	–	–	179	9	25	176	42	–	–	–	–	5	6
YEAR STRUCTURE BUILT															
1969 to March 1970	78	77	182	147	120	33	141	204	330	23	4	20	9	51	167
1965 to 1968	328	267	422	227	427	64	848	525	323	15	88	65	36	262	656
1960 to 1964	264	663	573	448	265	59	822	464	514	84	121	146	70	139	617
1950 to 1959	210	613	541	591	441	266	477	512	605	382	384	479	319	1 120	759
1940 to 1949	66	210	225	286	37	664	22	208	203	292	216	761	420	686	242
1939 or earlier	54	426	394	282	47	713	90	153	87	238	138	271	352	287	224
HEATING EQUIPMENT															
Steam or hot water	15	374	–	65	5	54	–	6	10	11	14	–	5	4	19
Warm air furnace	508	713	861	505	1 014	78	1 857	1 174	987	56	76	195	144	558	1 266
Built-in electric units	28	37	53	53	68	79	78	195	71	22	14	13	14	72	87
Floor, wall, or pipeless furnace	42	124	97	78	90	159	156	163	281	74	56	256	175	759	265
Other means or not heated	407	1 008	1 326	1 280	160	1 429	309	528	713	871	791	1 278	868	1 152	1 035
BASEMENT															
All units with basement	19	49	87	53	57	27	44	74	25	26	21	26	3	87	62
One-family houses with basement	19	39	78	53	57	22	44	69	17	26	15	26	3	78	43

ensus Tracts	Santa Rosa County—Con					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
ELECTED EQUIPMENT															
ith more than 1 bathroom	420	639	538	570	1 055	117	1 769	762	562	89	35	147	112	466	1 029
ith public water supply	395	2 131	1 150	639	1 224	1 806	2 370	1 963	1 887	1 048	917	1 725	1 201	2 472	2 094
ith public sewer	237	1 975	62	194	403	1 627	1 587	924	556	549	174	238	231	536	605
ith air conditioning	732	1 504	1 193	910	1 220	323	2 106	1 572	1 333	244	219	825	696	1 806	1 801
Room unit(s)	383	1 037	879	509	316	267	715	667	851	221	165	774	613	1 448	1 026
Central system	349	467	314	401	904	56	1 391	905	482	23	54	51	83	358	775
All occupied housing units	**973**	**2 021**	**2 134**	**1 577**	**1 192**	**1 660**	**2 329**	**1 992**	**1 874**	**988**	**836**	**1 606**	**1 110**	**2 320**	**2 587**
EAR MOVED INTO UNIT															
68 to March 1970	443	867	859	620	578	465	1 014	944	730	187	188	504	449	1 045	1 081
65 to 1967	243	324	393	255	226	237	621	332	399	142	152	255	138	258	508
60 to 1964	176	366	337	291	219	301	460	301	333	272	149	148	80	298	493
50 to 1959	77	241	295	260	169	233	208	227	283	215	229	290	151	424	380
49 or earlier	34	223	250	151	-	424	26	188	129	172	118	409	292	295	125
UTOMOBILES AVAILABLE															
	593	1 055	1 108	732	400	701	814	918	810	524	360	843	572	1 258	1 042
	249	558	654	483	606	175	1 208	783	678	111	144	406	346	743	1 094
or more	66	119	88	122	154	34	246	175	130	8	32	87	38	118	267
one	65	289	284	240	32	750	61	116	256	345	300	270	154	201	184
ROSS RENT															
Specified renter occupied units	**236**	**607**	**479**	**304**	**279**	**830**	**339**	**662**	**478**	**347**	**336**	**490**	**387**	**855**	**499**
ss than $40	-	36	8	29	-	71	-	-	-	25	24	-	-	-	13
0 to $59	4	57	45	9	-	360	16	11	101	115	126	84	38	39	12
0 to $79	60	96	113	54	5	247	20	31	47	97	71	103	61	136	76
0 to $99	56	69	91	48	5	72	15	81	49	54	42	122	126	166	80
00 to $149	41	205	118	92	34	40	20	149	142	27	25	128	114	306	122
50 to $199	42	109	31	24	130	5	179	320	66	-	30	7	16	138	130
00 to $249	-	-	-	6	89	-	59	41	7	-	4	-	-	44	29
50 or more	-	-	-	-	7	-	-	6	5	-	-	-	7	-	4
cash rent	33	35	73	42	9	35	30	23	61	29	14	46	25	26	33
edian	$93	$108	$87	$93	$185	$58	$173	$157	$103	$66	$62	$87	$93	$109	$115

ensus Tracts	Santa Rosa County—Con					Totals for split tracts in Escambia County									
	Tract 0105	Tract 0106	Tract 0107	Tract 0108	Tract 0109	Tract 0004	Tract 0011	Tract 0012	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0019	Tract 0021	Tract 0035
ROSS RENT AS PERCENTAGE OF INCOME															
Y INCOME															
Specified renter occupied units[1]	236	607	479	304	279	830	339	662	478	347	336	490	387	855	499
ss than $5,000	93	283	250	159	80	555	95	197	252	232	212	294	135	318	218
Less than 20 percent	–	23	25	28	–	134	25	–	11	40	51	24	10	9	8
20 to 24 percent	6	17	27	25	–	70	–	4	8	26	17	26	22	29	6
25 to 34 percent	28	41	56	27	–	100	5	35	67	41	37	50	23	61	47
35 percent or more	33	174	93	36	70	210	55	133	109	65	96	128	47	191	126
Not computed	26	28	49	43	10	41	10	25	57	60	11	66	33	28	31
Median	34.8	35.0+	33.7	26.9	35.0+	30.3	35.0+	35.0+	35.0+	29.9	33.8	35.0+	33.3	35.0+	35.0+
000 to $9,999	99	241	184	81	66	249	99	287	146	99	108	147	202	416	194
ess than 20 percent	65	103	108	27	6	210	14	74	85	95	88	111	138	218	91
20 to 24 percent	20	42	32	22	17	19	11	49	27	–	9	15	50	104	29
25 to 34 percent	8	59	19	27	43	15	38	113	19	–	8	14	7	62	56
35 percent or more	–	15	–	–	–	–	11	46	5	–	–	–	–	10	10
Not computed	6	22	25	5	–	5	25	5	10	4	3	7	7	22	8
Median	15.8	20.8	15.8	22.5	27.3	12.5	28.2	26.6	18.4	13.1	13.4	17.3	16.9	19.3	20.3
0,000 to $14,999	27	78	29	52	76	16	101	117	64	11	5	49	35	87	66
25 percent or more	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not computed	–	–	4	9	5	–	–	–	–	–	–	5	–	–	–
Median	15.8	14.1	10.0–	16.0	17.8	...	18.0	17.2	16.6	...	...	10.0–	11.0	16.1	15.0
5,000 or more	17	5	16	12	57	10	44	61	16	5	11	–	15	34	21
25 percent or more	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not computed	6	–	5	–	–	6	–	–	4	–	–	–	–	–	–
Median	...	...	...	...	13.5	...	13.5	10.0–	...	...	...	–	...	10.0–	...

[1]Excludes one-family homes on 10 acres or more

Table H-3. Occupancy, Utilization, and Financial Characteristics of Housing Units With Negro Head of Household: 1970

(For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Census Tracts With 400 or More Negro Population	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014	Tract 0015
All occupied housing units	10 979	10 474	5 649	4 825	505	597	153	1 472	236	1 539	439	345	139	186	437
TENURE AND PLUMBING															
Owner occupied	6 489	6 160	2 859	3 301	329	266	94	640	135	770	174	269	117	62	270
With all plumbing facilities	5 144	4 938	2 496	2 442	206	224	74	568	121	633	151	258	113	60	237
Renter occupied	4 490	4 314	2 790	1 524	176	331	59	832	101	769	265	96	22	124	167
With all plumbing facilities	2 872	2 797	1 967	830	75	199	48	673	59	443	210	82	20	124	89
ROOMS															
1 room	196	186	148	38	10	37	–	32	6	50	11	1	1	1	9
2 rooms	507	480	314	166	27	31	5	77	30	110	18	8	2	2	27
3 and 4 rooms	4 475	4 248	2 377	1 871	227	252	64	719	100	669	180	91	36	49	185
5 and 6 rooms	4 543	4 345	2 128	2 217	198	196	67	499	71	526	182	182	81	128	171
7 rooms or more	1 258	1 215	682	533	43	81	17	145	29	184	48	83	19	6	45
Median	4.6	4.6	4.5	4.8	4.4	4.3	4.7	4.3	4.1	4.3	4.6	5.4	5.1	4.9	4.5
PERSONS															
1 person	1 876	1 771	1 131	640	105	151	20	260	48	388	75	48	12	9	108
2 and 3 persons	4 052	3 880	2 231	1 649	172	239	66	569	97	615	159	172	55	61	161
4 and 5 persons	2 552	2 437	1 232	1 205	115	104	30	337	55	300	96	84	43	74	95
6 persons or more	2 499	2 386	1 055	1 331	113	103	37	306	36	236	109	61	29	42	73
Median	3.2	3.2	2.9	3.7	3.2	2.5	3.1	3.1	2.8	2.5	3.3	2.9	3.6	4.0	2.7
Units with roomers, boarders, or lodgers	406	389	266	123	17	36	12	42	14	90	26	11	4	1	23
PERSONS PER ROOM															
1.00 or less	8 169	7 797	4 375	3 422	372	474	118	1 082	181	1 234	313	306	106	137	355
1.01 to 1.50	1 568	1 499	697	802	69	66	14	210	32	144	79	38	26	38	42
1.51 or more	1 242	1 178	577	601	64	57	21	180	23	161	47	21	7	11	40
Units with all plumbing facilities – 1.01 or more	1 892	1 826	956	870	66	77	26	323	36	188	109	50	30	49	54

Census Tracts With 400 or More Negro Population

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014	Tract 0015
VALUE															
Specified owner occupied units[1]	$ 893	$ 600	2 644	2 956	293	243	86	596	126	705	159	254	113	56	250
Less than $5 000	1 594	1 468	562	906	126	72	31	138	26	186	33	15	5	1	48
$5 000 to $9 999	2 405	2 287	1 151	1 136	118	112	36	305	32	322	94	61	23	37	117
$10 000 to $14 999	1 180	1 152	563	589	28	41	11	95	31	142	23	80	51	15	55
$15 000 to $19 999	459	443	223	220	16	12	4	38	24	35	6	41	27	2	20
$20 000 to $34 999	203	198	117	81	5	4	2	16	11	17	1	48	5	1	8
$35 000 or more	52	52	28	24	–	2	2	4	2	3	2	9	2	–	2
Median	$7 400	$7 500	$8 100	$7 100	$5 600	$6 900	$6 700	$7 100	$10 500	$7 200	$7 200	$12 900	$12 900	$9 100	$8 200
CONTRACT RENT															
Specified renter occupied units[2]	3 992	3 882	2 575	1 307	110	309	52	747	94	720	247	89	20	118	157
Median	$43	$44	$45	$41	$30 –	$44	$50	$45	$47	$42	$48	$55	$54	$49	$40

Census Tracts With 400 or More Negro Population

	Balance of Escambia County														
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040
All occupied housing units	174	469	666	400	124	276	242	753	116	254	86	300	102	119	419
TENURE AND PLUMBING															
Owner occupied	131	298	421	169	80	211	183	636	104	205	69	212	70	86	276
With all plumbing facilities	106	247	317	128	72	166	148	553	99	131	31	125	33	37	130
Renter occupied	43	171	245	231	44	65	59	117	12	49	17	88	32	33	143
With all plumbing facilities	22	92	109	208	39	29	42	50	9	20	7	25	3	5	24
ROOMS															
1 room	–	2	12	1	–	3	–	3	–	4	1	1	1	2	4
2 rooms	3	13	37	10	3	15	9	18	1	4	6	5	7	5	19
3 and 4 rooms	55	212	280	143	54	83	85	253	22	108	31	140	35	47	176
5 and 6 rooms	95	184	280	214	53	142	107	384	80	112	34	123	53	57	165
7 rooms or more	21	58	57	32	14	33	41	95	13	26	14	31	6	8	55
Median	5.0	4.6	4.5	4.8	4.7	5.0	5.0	5.0	5.5	4.7	4.9	4.6	4.8	4.7	4.6

Census Tracts With 400 or More Negro Population

	Balance of Escambia County														
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040
PERSONS															
1 person	24	67	103	19	15	28	43	74	6	33	11	43	12	20	117
2 and 3 persons	62	168	232	130	50	111	90	228	33	100	26	68	34	33	126
4 and 5 persons	43	109	154	122	34	66	57	213	33	55	22	73	19	24	86
6 persons or more	45	125	177	129	25	71	52	238	44	66	27	116	37	42	90
Median	3.6	3.5	3.5	4.3	3.4	3.5	3.2	4.1	4.4	3.4	4.0	4.5	4.0	4.0	2.8
Units with roomers, boarders, or lodgers	8	17	19	11	3	2	10	16	3	6	2	6	–	3	8
PERSONS PER ROOM															
1.00 or less	131	337	467	268	89	204	195	518	81	180	62	176	60	73	318
1.01 to 1.50	26	72	109	90	23	42	28	129	20	45	15	60	26	26	55
1.51 or more	17	60	90	42	12	30	19	106	15	29	9	64	16	20	46
Units with all plumbing facilities – 1.01 or more	23	90	127	109	30	52	38	171	31	39	7	55	18	16	21
VALUE															
Specified owner occupied units[1]	124	275	378	152	76	186	163	575	101	181	52	194	54	68	242
Less than $5,000	20	54	109	42	12	47	61	122	6	61	25	86	30	38	157
$5,000 to $9,999	44	154	179	65	38	45	73	166	28	78	17	88	24	25	62
$10,000 to $14,999	32	47	55	29	16	61	18	191	56	23	6	12	1	4	12
$15,000 to $19,999	13	11	24	8	8	24	7	79	8	12	2	6	–	–	8
$20,000 to $34,999	15	5	8	6	2	6	3	17	3	4	1	1	1	1	3
$35,000 or more	–	4	3	2	–	3	1	–	–	3	1	1	–	–	2
Median	$9,700	$7,600	$6,900	$7,100	$8,200	$10,100	$6,100	$10,000	$11,100	$6,700	$5,300	$5,400	$10,000+	$10,000+	$5,000+
CONTRACT RENT															
Specified renter occupied units[2]	33	158	225	210	43	57	52	101	10	43	9	75	19	12	199
Median	$44	$39	$39	$47	$51	$45	$49	$37	$50	$42	$30	$30–	$30–	$30–	$30–

[1]Limited to one-family homes on less than 10 acres and no business on property. [2]Excludes one-family homes on 10 acres or more and all "no cash rent" units.

Table H-3. Occupancy, Utilization, and Financial Characteristics of Housing Units With Negro Head of Household: 1970—Continued

[For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Negro Population	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0035
All occupied housing units	**237**	**1 816**	**368**	**906**	**693**	**134**	**254**
TENURE AND PLUMBING							
Owner occupied	145	653	193	568	439	80	205
With all plumbing facilities	99	579	166	484	330	72	131
Renter occupied	92	863	167	338	254	44	49
With all plumbing facilities	40	687	146	181	114	39	20
ROOMS							
1 room	4	33	1	11	12	-	4
2 rooms	10	79	5	40	41	3	4
3 and 4 rooms	100	748	104	397	293	54	108
5 and 6 rooms	104	508	223	355	286	53	112
7 rooms or more	19	148	27	103	61	14	26
Median	4.6	4.2	4.9	4.5	4.5	4.7	4.7
PERSONS							
1 person	48	270	33	175	108	15	33
2 and 3 persons	81	587	123	329	241	50	100
4 and 5 persons	56	347	117	204	159	34	55
6 persons or more	52	312	87	198	185	25	66
Median	3.2	3.1	3.9	3.1	3.5	3.4	3.4
Units with roomers, boarders, or lodgers	9	44	9	40	19	3	6
PERSONS PER ROOM							
1.00 or less	175	1 115	268	692	484	89	180
1.01 to 1.50	31	215	64	114	113	23	45
1.51 or more	31	186	28	100	96	12	29
Units with all plumbing facilities—1.01 or more	33	330	72	144	134	30	39

Census Tracts With 400 or More Negro Population

	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0035
VALUE							
Specified owner occupied units[1]	**126**	**608**	**180**	**525**	**396**	**76**	**181**
Less than $5,000	36	142	21	102	115	12	61
$5,000 to $9,999	61	311	81	271	186	38	78
$10,000 to $14,999	16	96	47	102	60	16	23
$15,000 to $19,999	10	38	15	31	24	8	12
$20,000 to $34,999	3	17	16	13	8	2	4
$35,000 or more	–	4	–	6	3	–	3
Median	$6 400	$7 100	$9 300	$7 800	$6 900	$8 200	$6 700
CONTRACT RENT							
Specified renter occupied units[2]	**69**	**777**	**151**	**315**	**234**	**43**	**43**
Median	$30 –	$44	$49	$40	$39	$51	$42

[1]Limited to one-family homes on less than 10 acres and no business on property. [2]Excludes one-family homes on 10 acres or more and all "no cash rent" units.

Table H-4. Structural, Equipment, and Financial Characteristics of Housing Units With Negro Head of Household: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Negro Population	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014	Tract 0015
All occupied housing units	**18 907**	**18 400**	**5 660**	**4 740**	**587**	**604**	**141**	**1 485**	**224**	**1 555**	**436**	**363**	**151**	**195**	**434**
UNITS IN STRUCTURE															
1 (includes mobile home or trailer)	9 359	8 892	4 651	4 241	467	524	127	1 177	208	1 241	327	347	146	106	383
2 to 4	924	893	613	280	31	68	14	116	16	272	53	16	–	–	41
5 or more	624	615	396	219	9	12	–	192	–	42	56	–	5	89	–
YEAR STRUCTURE BUILT															
1960 to March 1970	2 328	2 146	514	1 632	182	16	11	129	11	55	15	35	21	141	58
1950 to 1959	2 352	2 311	757	1 554	41	23	20	178	37	80	30	136	88	54	84
1949 or earlier	6 227	5 943	4 389	1 554	284	565	110	1 178	176	1 420	391	192	42	–	282
SELECTED EQUIPMENT															
With air conditioning	1 944	1 877	1 015	862	67	53	51	215	76	180	27	138	70	34	124
With more than 1 bathroom	826	794	477	317	32	19	21	70	50	119	6	105	28	–	47
With central or built-in heating system	2 282	2 222	1 126	1 096	60	41	16	242	63	165	48	205	66	161	87
With public water supply	9 877	9 574	5 652	3 922	303	597	126	1 492	225	1 543	437	363	157	186	440
With public sewer	6 377	6 238	5 361	877	139	597	89	1 415	219	1 515	437	358	151	131	384
With automobile(s) available	6 254	6 021	2 966	3 055	233	236	93	791	143	697	221	268	113	64	266
1	4 725	4 547	2 301	2 246	178	157	47	626	98	597	201	171	93	52	219
2 or more	1 529	1 474	665	809	55	79	46	165	45	100	20	97	20	12	47
YEAR MOVED INTO UNIT															
1968 to March 1970	3 060	2 889	1 722	1 167	171	203	11	409	61	481	152	72	50	140	92
1960 to 1967	3 978	3 805	1 913	1 892	173	201	56	489	51	500	134	153	85	27	195
1959 or earlier	3 914	3 724	2 023	1 701	190	193	59	594	113	562	151	138	22	19	153

Census Tracts With 400 or More Negro Population

	Total SMSA	Escambia County			Santa Rosa County	Pensacola									
		Total	Pensacola	Balance		Tract 0002	Tract 0003	Tract 0004	Tract 0005	Tract 0006	Tract 0007	Tract 0008	Tract 0013	Tract 0014	Tra 001
GROSS RENT															
Specified renter occupied units[1]	4 277	4 097	2 674	1 423	180	325	42	759	76	792	262	91	32	121	
Less than $40	483	442	248	194	41	29	–	71	–	100	31	–	–	–	
$40 to $59	1 495	1 456	973	483	39	84	9	341	25	267	109	5	5	84	
$60 to $79	1 207	1 169	836	333	38	148	17	221	34	247	49	48	5	19	
$80 to $99	539	530	328	202	9	56	6	58	8	90	47	15	17	5	
$100 to $149	228	222	150	72	6	8	–	40	6	64	5	9	–	6	
$150 to $199	38	38	20	18	–	–	–	–	3	–	5	–	5	7	
$200 or more	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
No cash rent	287	240	119	121	47	–	10	28	–	24	16	14	–	–	
Median	$60	$61	$61	$59	$49	$68	$68	$57	$68	$62	$57	$74	$85	$52	
GROSS RENT AS PERCENTAGE OF INCOME BY INCOME															
Less than $10 000	4 101	3 931	2 548	1 383	170	297	42	733	76	770	250	74	27	121	
25 percent or more	1 838	1 778	1 099	679	60	173	19	291	36	349	90	28	10	80	
35 percent or more	1 218	1 167	728	439	51	136	13	191	22	219	59	17	10	44	
Not computed	374	331	176	155	43	–	10	39	–	54	16	9	–	4	
Median	24.7	24.7	23.6	27.7	23.5	31.6	30.0	21.3	18.0	24.4	22.2	23.7	16.5	31.0	

Census Tracts With 400 or More Negro Population

	Balance of Escambia County														
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	T 0
All occupied housing units	162	491	669	408	108	275	262	768	92	258	59	305	96	102	
UNITS IN STRUCTURE															
1 (includes mobile home or trailer)	158	411	572	241	100	262	246	749	86	249	59	296	96	102	
2 to 4	4	59	87	12	8	13	16	19	6	9	–	–	–	–	
5 or more	–	21	10	155	–	–	–	–	–	–	–	9	–	–	
YEAR STRUCTURE BUILT															
1960 to March 1970	56	64	149	220	32	135	33	446	72	99	20	106	30	34	
1950 to 1959	50	255	281	128	45	59	67	257	6	91	20	109	11	17	
1949 or earlier	56	172	239	60	31	81	162	65	14	68	19	90	55	51	

Census Tracts With 400 or More Negro Population

	Balance of Escambia County													
	Tract 0014	Tract 0015	Tract 0016	Tract 0017	Tract 0018	Tract 0020	Tract 0027	Tract 0032	Tract 0034	Tract 0035	Tract 0036	Tract 0037	Tract 0038	Tract 0039	Tract 0040
SELECTED EQUIPMENT															
With air conditioning	60	89	92	139	24	54	73	145	46	-	-	19	-	8	44
With more than 1 bathroom	40	31	27	14	-	45	-	100	-	-	13	6	-	6	-
With central or built-in heating system	61	45	96	196	5	105	34	321	49	47	10	24	6	-	30
With public water supply	126	499	642	398	85	258	254	471	75	163	19	226	51	90	326
With public sewer	32	88	74	207	-	12	5	235	64	13	-	20	-	-	13
With automobile(s) available	124	340	373	237	47	220	159	664	82	156	33	192	36	58	133
1	78	273	252	184	28	159	114	465	41	118	12	162	36	45	117
2 or more	46	67	121	53	19	61	45	199	41	38	21	30	-	13	16
YEAR MOVED INTO UNIT															
1968 to March 1970	17	89	127	230	43	30	54	188	13	60	13	64	15	32	72
1960 to 1967	71	203	268	116	25	151	69	408	69	110	24	124	40	14	116
1959 or earlier	76	207	265	79	17	92	145	169	-	91	21	132	42	69	224
GROSS RENT															
Specified renter occupied units[1]	...	180	251	213	60	42	70	114	...	56	...	90	26	...	132
Less than $40	...	8	24	-	-	11	10	32	...	-	...	18	5	...	76
$40 to $59	...	77	101	134	8	-	-	41	...	6	...	39	6	...	30
$60 to $79	...	52	71	57	22	-	14	11	...	28	...	8	9	...	6
$80 to $99	...	24	34	14	15	15	36	12	...	7	...	10	6	...	6
$100 to $149	...	15	15	-	7	-	-	5	...	-	...	-	-	...	-
$150 to $199	...	-	-	-	-	-	-	6	...	7	...	-	-	...	-
$200 or more	...	-	-	-	-	-	-	-	...	-	...	-	-	...	-
No cash rent	...	4	6	8	8	16	10	7	...	8	...	15	-	...	14
Median	...	$62	$60	$50	$78	$83	$82	$50	...	$66	...	$52	$62	...	$36
GROSS RENT AS PERCENTAGE OF INCOME BY INCOME															
Less than $10,000	...	180	246	209	48	42	65	114	...	56	...	90	26	...	128
25 percent or more	...	83	108	111	29	18	35	52	...	35	...	27	21	...	88
35 percent or more	...	48	71	71	15	18	20	35	...	28	...	17	21	...	46
Not computed	...	22	6	18	3	16	10	18	...	8	...	24	-	...	10
Median	...	26.1	20.4	28.9	29.6	35.0+	30.0	27.4	...	35.0+	...	19.4	35.0+	...	31.9

[1] Excludes one-family homes on 10 acres or more

Table H-4. Structural, Equipment, and Financial Characteristics of Housing Units With Negro Head of Household: 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Negro Population	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0035
All occupied housing units	261	1 522	357	915	696	108	258
UNITS IN STRUCTURE							
1 (includes mobile home or trailer)	230	1 201	264	794	593	100	249
2 to 4	31	125	4	100	93	8	9
5 or more	–	196	89	21	10	–	–
YEAR STRUCTURE BUILT							
1960 to March 1970	106	129	197	122	149	32	99
1950 to 1959	20	192	104	339	292	45	91
1949 or earlier	135	1 201	56	454	255	31	68
SELECTED EQUIPMENT							
With air conditioning	58	229	94	213	105	24	–
With more than 1 bathroom	16	70	40	78	27	–	–
With central or built-in heating system	35	247	222	132	101	5	47
With public water supply	220	1 532	312	939	670	85	163
With public sewer	121	1 450	163	472	81	–	13
With automobile(s) available	114	811	188	606	395	47	156
1	85	639	130	492	258	28	118
2 or more	29	172	58	114	137	19	38
YEAR MOVED INTO UNIT							
1968 to March 1970	97	418	157	181	142	43	60
1960 to 1967	104	506	98	398	268	25	110
1959 or earlier	77	608	95	360	278	17	91

Census Tracts With 400 or More Negro Population

	Santa Rosa County	Totals for split tracts in Escambia County					
	Tract 0106	Tract 0004	Tract 0014	Tract 0015	Tract 0016	Tract 0018	Tract 0035
GROSS RENT							
Specified renter occupied units[1]	94	784	142	336	257	48	56
Less than $40	16	71	–	25	24	–	–
$40 to $59	34	350	88	115	107	8	6
$60 to $79	23	230	31	94	71	22	28
$80 to $99	–	67	5	50	34	15	7
$100 to $149	–	40	11	27	15	7	–
$150 to $199	–	–	7	–	–	–	7
$200 or more	–	–	–	–	–	–	–
No cash rent	21	28	–	25	6	8	8
Median	$47	$57	$54	$65	$59	$78	$66
GROSS RENT AS PERCENTAGE OF INCOME BY INCOME							
Less than $10 000	88	760	142	320	252	48	56
25 percent or more	40	309	96	106	108	29	35
35 percent or more	31	205	60	65	71	15	28
Not computed	21	39	4	60	6	3	8
Median	32.2	21.7	32.5	20.4	21.1	29.6	35.0+

[1]Excludes one-family homes on 10 acres or more.

Table H-5. Characteristics of Housing Units With Household Head of Spanish Language: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

Census Tracts With 400 or More Persons of Spanish Language	Total SMSA	Escambia County			Santa Rosa County
		Total	Pensacola	Balance	
All occupied housing units	781	710	259	451	71
TENURE AND PLUMBING					
Owner occupied	491	470	172	298	21
With all plumbing facilities	472	451	160	291	...
Renter occupied	290	240	87	153	50
With all plumbing facilities	269	219	87	132	50
ROOMS					
1 room	6	6	–	6	–
2 rooms	7	7	7	–	–
3 and 4 rooms	234	188	49	139	46
5 and 6 rooms	420	395	135	260	25
7 rooms or more	114	114	68	46	–
UNITS IN STRUCTURE					
1 (includes mobile home or trailer)	695	650	233	417	45
2 to 4	34	22	–	22	12
5 or more	52	38	26	12	14
YEAR STRUCTURE BUILT					
1960 to March 1970	272	241	67	174	31
1950 to 1959	218	200	85	115	18
1949 or earlier	291	269	107	162	22

Census Tracts With 400 or More Persons of Spanish Language

	Total SMSA	Escambia County			Santa Rosa County
		Total	Pensacola	Balance	
PERSONS					
1 person	46	46	29	17	–
2 and 3 persons	390	351	114	237	39
4 and 5 persons	226	201	70	131	25
6 persons or more	119	112	46	66	7
Median	3.2	3.2	3.2	3.2	3.3
Units with roomers, boarders, or lodgers	5	5	–	5	–
PERSONS PER ROOM					
1.00 or less	698	634	243	391	64
1.01 to 1.50	70	63	16	47	7
1.51 or more	13	13	–	13	–
Units with all plumbing facilities – 1.01 or more	66	59	16	43	7
YEAR MOVED INTO UNIT					
1968 to March 1970	423	371	106	265	52
1960 to 1967	220	201	74	127	19
1959 or earlier	138	138	79	59	–
SELECTED EQUIPMENT					
With air conditioning	537	501	174	327	36
With more than 1 bathroom	258	233	104	129	25
With central or built-in heating system	524	489	219	270	35
With public water supply	708	658	259	399	50
With public sewer	474	424	240	184	50
With automobile(s) available	704	639	227	412	65
1	357	313	85	228	44
2 or more	347	326	142	184	21

Census Tracts With 400 or More Persons of Spanish Language

	Total SMSA	Escambia County			Santa Rosa County
		Total	Pensacola	Balance	
VALUE					
Specified owner occupied units[1]	432	418	158	260	...
Less than $5,000	48	48	12	36	...
$5,000 to $9,999	91	91	28	63	...
$10,000 to $14,999	122	122	44	78	...
$15,000 to $19,999	88	81	46	35	...
$20,000 to $34,999	71	64	22	42	...
$35,000 or more	12	12	6	6	...
Median	$13 100	$12 800	$14 100	$12 400	...
GROSS RENT					
Specified renter occupied units[2]	271	221	87	134	50
Less than $40	–	–	–	–	–
$40 to $59	24	17	17	–	7
$60 to $79	49	49	14	35	–
$80 to $99	16	16	6	10	–
$100 to $149	78	66	–	66	12
$150 to $199	45	39	32	7	6
$200 or more	5	5	5	–	–
No cash rent	54	29	13	16	25
Median	$108	$106	$100	$106	...
CONTRACT RENT					
Specified renter occupied units[2]	271	221	87	134	50
Median	$75	$73	$70	$73	...
GROSS RENT AS PERCENTAGE OF INCOME BY INCOME					
Less than $10,000	261	216	87	129	45
25 percent or more	118	111	46	65	7
35 percent or more	85	78	41	37	7
Not computed	44	24	13	11	20
Median	27.9	29.5	35.0+	27.1	...

[1]Limited to one-family homes on less than 10 acres and no business or property. [2]Excludes one-family homes on 10 acres or more [3]Excludes one-family homes on 10 acres or more and all "no cash rent" units.

EXHIBIT 8
Voter Registration, City of Pensacola

		TOTAL REGISTRATION	F.H.	DEMOCRATS		REPUBLICANS		OTHER	
				White	Colored	White	Colored	White	Colored
1944		33,437							
*1946			36,519	33,870	2,292	182	175		
1948	Prim.	39,633							
1948	Gen.	40,077		35,109	4,629	201	69	63	6
1950		45,394		38,874	5,972	230	261	49	8
1952	May	44,152		38,154	5,639	181	130	41	7
1952	Nov.	47,083		40,288	6,034	475	139	98	9
1954		49,824		42,437	6,383	675	162	159	8
1954	Nov.	50,103		42,622	6,457	689	170	155	10
*1955	Nov.		35,940						
*1956	May	56,746		48,464	6,527	1,315	206	202	32
1956	Nov.	56,880	39,078						
1957	Nov.		38,820						
1957	Dec.	56,870							
1958	Aug.	60,307		50,455	7,740	1,501	337	262	12
1958	Sept.	15,320 (School Bond)							
1959	Nov.	61,113	18,020	50,672	8,314	1,457	394	263	13
1960	May	57,464		48,138	7,898	972	274	172	10
1960	Nov.	63,013		51,950	8,789	1,590	344	325	15
1961	Nov.	62,980	46,261	51,859	8,807	1,627	351	321	15
1962	May	62,554		51,471	8,911	1,573	290	299	10

		TOTAL REGISTRATION	F.H.	DEMOCRATS White	DEMOCRATS Colored	REPUBLICANS White	REPUBLICANS Colored	OTHER White	OTHER Colored
1962	Nov.	63,368		52,012	9,091	1,640	319	295	11
1963	Feb.	63,567		52,120	9,172	1,649	317	297	12
1963	April	25,239 (City)		(D&R) 18,774	6,465 (D&R)				
*1963	Oct.	66,302	48,524	53,410	10,500	1,743	327	310	12
1964	Jan.	54,872							
1964	May	65,501		52,299	10,813	1,852	262	266	9
1964	Nov.	73,691		56,984	12,898	2,979	346	463	21
1965	May	28,416 (City)		(D&R) 20,507	7,909 (D&R)				
1965	Oct.	74,675	52,870	57,474	13,096	3,245	343	498	19
*1965	Oct.	28,669 (City)							
1966	April	71,591		55,018	12,668	3,136	294	459	16
1966	Aug.	72,532		55,415	12,993	3,300	302	496	26
1966	Oct.	73,317	52,627	55,754	13,250	3,426	324	514	32

FEDERAL CENSUS, 1960 (Total) 100,426; Over 21 (Colored) 19,124

YEAR	TOTAL REGISTRATION	F.H.	DEMOCRATES		REPUBLICANS		OTHER	
			White	Colored	White	Colored	White	Colored
1967 Feb.	73,530	52,700	55,737	13,293	3,618	327	524	31
1967 April	73,647	52,732	55,768	13,293	3,705	328	523	30
1967 April	28,588 (City)	18,474	18,932	7,927	1,330	218	166	15
1967 Oct.	74,595	53,180	56,313	13,420	3,947	333	555	27
1968 April	72,104	52,895	54,853	12,238	4,150	249	572	42
1968 Oct.	81,590	57,261	60,650	13,214	6,200	317	1,175	34
1969 April	81,481	57,108	60,398	13,182	6,329	318	1,218	36
1969 April	29,042 (City)	18,652	18,861	7,505	2,172	185	299	20
1969 Oct.	81,598	57,002	60,284	13,263	6,434	330	1,232	55
1970 Aug.	80,371	56,162	59,065	12,738	6,976	292	1,260	40
1971 April	28,657 (City)	18,113	18,206	7,389	2,515	181	345	21
1971 May	81,148	55,948	59,470	12,907	7,100	306	1,328	37
1971 Oct.	84,610		51,468	13,378	7,737	323	1,632	36
1972 Mar.	82,478		60,748	12,494	7,582	258	1,315	28
1972 Aug.	90,961		65,208	13,664	9,973	288	1,785	43
1972 Oct.	95,731		67,292	14,068	11,627	312	2,374	58
1973 May	32,554 (City)							
1973 June	96,082		67,241	14,235	11,802	318	2,432	54

EXHIBIT 14 Excerpts
Computer Printouts
Analyzing Voting Patterns for Selected Elections
Page 8

STATISTICAL PACKAGE FOR THE SOCIAL SCIENCES (SPSSG031, 03/25/75)

Run Name	County Commissioner, First Primary, District 2, 1966
Full Name	ANAL80
Variable List	INCOME, WDEM, WREP, WOTHERS, NDEM, NREP, NOTHERS, C1, C2, C3, C4, C5, C6, C7
Input Format	Fixed (T8, F5.0/T6, 6F4.0/ 12X, 7(F4.0, 3X))

Ignoring indefinite repetition, the input format provides for 14 variables. 14 will be read. It provides for 3 records ('Cards') per case. A maximum of 61 'columns' are used on a record.

No. of Cases	112
Input Medium	Card
Compute	White = WDEM + REP + WOTHERS
Compute	Repubs = WREP + NREP
Compute	Black = NDEM + NREP + NOTHERS
Compute	Total = White + Black
Compute	Black % = Black/Total * 100
Compute	Repubs % = Repubs/Total * 100
Compute	Vote = C1 + C2 + C3 + C4 + C5 + C6 + C7
Compute	Turnout = Vote/Total * 100
Compute	Cobb % = C1/Vote * 100
Compute	Reed % = C3/Vote * 100
Transform	

Item	Actual	Maximum
VAPS Recoded	0	100
FILE NAME	ANAL 80	
Variable List	INCOME, WDEM, WREP, WOTHERS, NDEM, NREP, NOTHERS, C1, C2, C3, C4, C5, C6, C7	
Input Format	Fixed (T8, F5.0/T6, 6F4.0/ 12X, 7(F4.0, 3X))	

Ignoring indefinite repetition, the input format provides for 14 variables. 14 will be read. It provides for 3 records ('Cards') per case. A maximum of 61 'columns' are used on a record.

No. of Cases	112
Input Medium	Card
Missing Values	Income (0)
Compute	White = WDEM + WREP + WOTHERS.
Compute	Repubs = WREP + NREP
Compute	Black = NDEM + NREP + NOTHERS
Compute	Total = White + Black
Compute	Black % = Black/Total * 100
Compute	Repubs % = Repubs/Total * 100
Compute	Vote = C1 + C2 + C3 + C4 + C5 + C6 + C7
Compute	Turnout = Vote/Total * 100
Compute	COBB 6 = C1/Vote * 100
Compute	REED % = C3/Vote * 100

Item	Actual	Maximum
VAPS Recorded	0	100
Values Recoded	0	1044
Transformations	10	261
Math Operators	22	2088
Literal Values	2	194

Read Input Data	
Regression	Variables = Black %, Cobb %, Income, Turnout/ Regression = COBB % with Black %, Income (1)/
Statistics	1, 2

****Regression problem requires 480 Bytes workspace, not including residuals****

Variable	Mean	Standard Dev	Cases
Blacks	17.2300	26.9808	111
COBB	39.2414	13.6790	111
Income	8927.8108	2156.4789	111
Turnout	49.8689	6.5020	111

CORRELATION COEFFICIENTS

A value of $9.00000 is printed if a coefficient cannot be computed.

	BLACK %	COBB %	INCOME	TURNOUT
BLACK %	1.00000	−0.80203	−0.52137	0.04373
COBB %	−0.80203	1.00000	0.61066	0.17122
INCOME	−0.52137	0.61066	1.00000	0.29879
TURNOUT	0.04373	0.17122	0.29879	1.00000

MULTIPLE REGRESSION
Variable List 1 – Regression List 1

DEPENDENT VARIABLE ... COBB %

Variables entered on Step Number 1 . . . Black %

Multiple R	0.80203	Analysis of Variance	DF	Sum of Squares	Mean Square	F
Square	0.64325	Regression	1.	13239.87231	13239.87231	196.53801
Adjusted R Square	0.64325	Residual	109.	7342.83440	67.36545	
Standard Error	8.20765					

---------- Variables in the Equation ----------

Variable	B	Bet	Std Error B	F
Black %	−0.40662	−0.80203	0.02900	196.538
(Constant)	46,24753			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F
INCOME	0.26437	0.37771	0.72818	17.971

Variable(s) entered on Step Number 2 . . INCOME

Multiple R	0.83315	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.69415	Regression	2.	14287.41183	7143.70592	122.55506
Adjusted R Square	0.69134	Residual	108.	6295.29487	58.28977	
Standard Error	7.63477					

Variables in the Equation					Variables not in the Equation				
Variable	B	Beta	Std Error B	F	Variable	Beta In	Partial	Tolerance	F
Black %	−0.33674	−0.66420	0.03162	113.433					
Income	0.00168	0.26437	0.00040	17.971					
(Constant)	30.07180								

Maximum step reached

SUMMARY TABLE

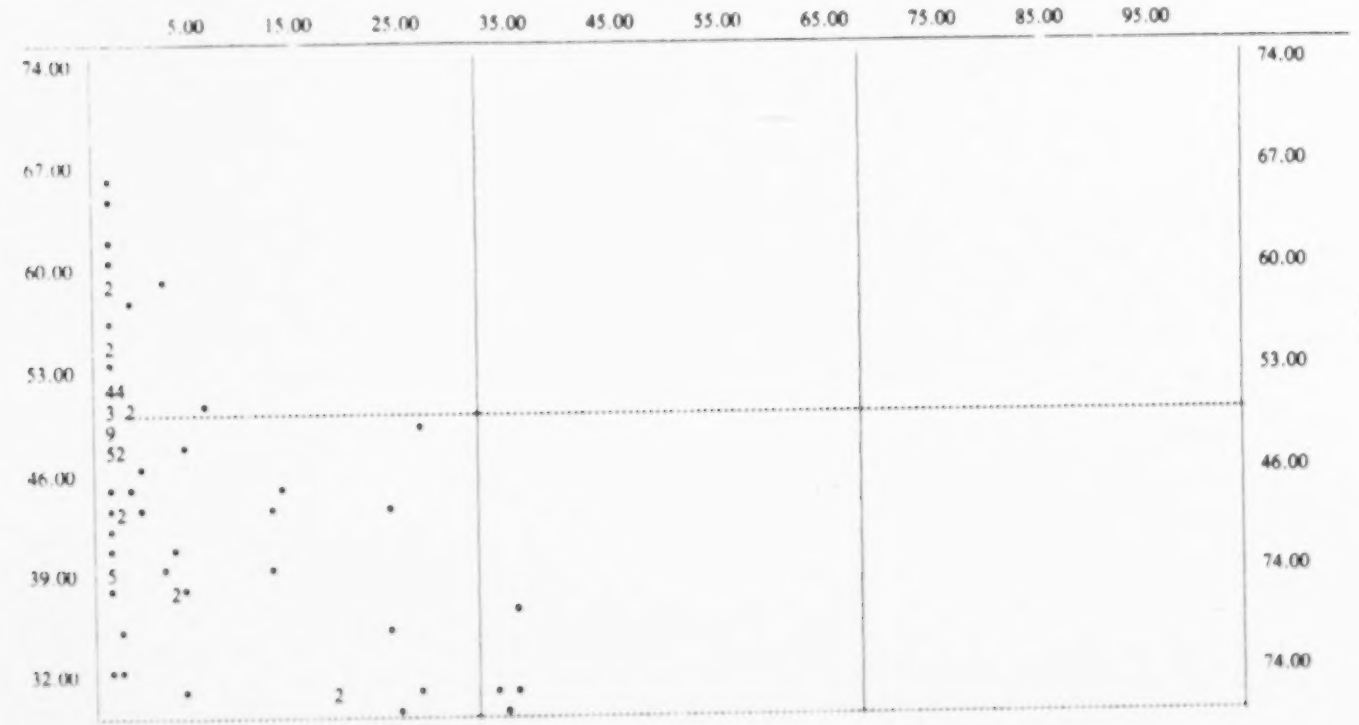
Variable	Multiple R	R Square	RSQ Change	Simple R	B	Beta
Black %	0.80203	0.64325	0.64325	−0.80203	−0.33674	−0.66420
Income	0.83315	0.69415	0.05089	0.61066	0.00168	0.26437
(Constant)					30.07180	

COUNTY COMMISSIONER FIRST PRIMARY, DISTRICT 2, 1966

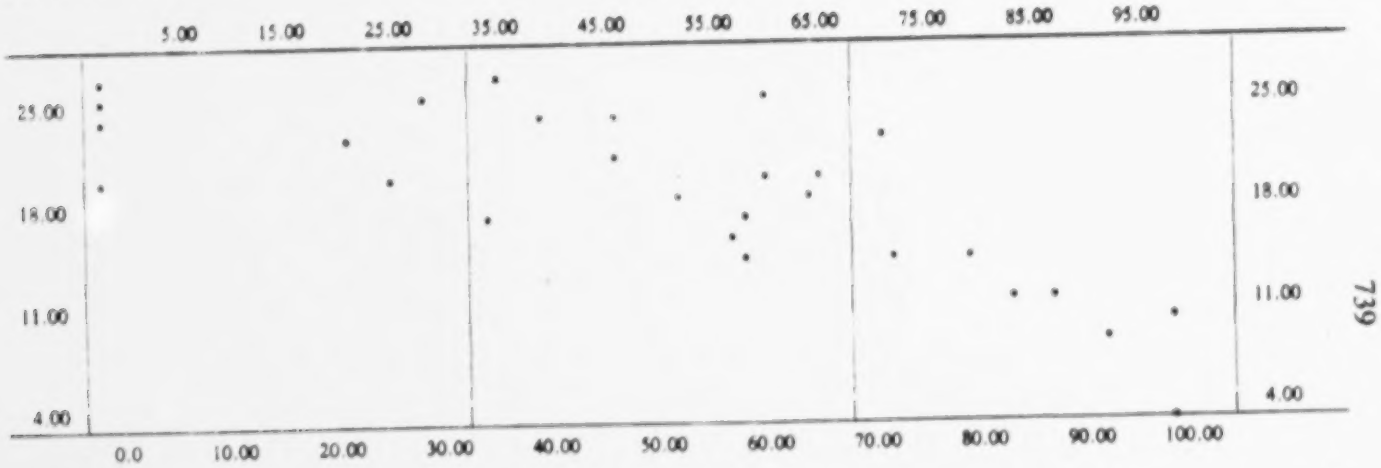
Scattergram	Cobb % with Black %
Options	7
Statistics	All

Given space allows for 1832 Cases for 'Scattergram'

FILE ANAL8O (CREATION DATE =
SCATTERGRAM OF (DOWN) COBB % (ACROSS) BLACK %



FILE ANAL8O (CREATION DATE =
SCATTERGRAM OF (DOWN) COBB % (ACROSS) BLACK %



STATISTICS

Correlation (R) –	−0.80279	R Squared –	0.64448	Significance –	0.00001
Std Err CF Est –	8.17034	Intercept (A) –	46.24572	Slope (B) –	0.40672
Floited Values –	112	Excluded Values –	0	Missing Values –	0

'********' is printed if a coefficient cannot be computed.

Variables in the Equation					Variables not in the Equation				
Variable	B	Beta	Std Error B	F	Variable	Beta In	Partial	Tolerance	F
Black %	0.84520	0.99000	0.01468	3315.861					
Income	0.00003	0.00324	0.00018	0.036					
(Constant)	7.00191								

Maximum step reached

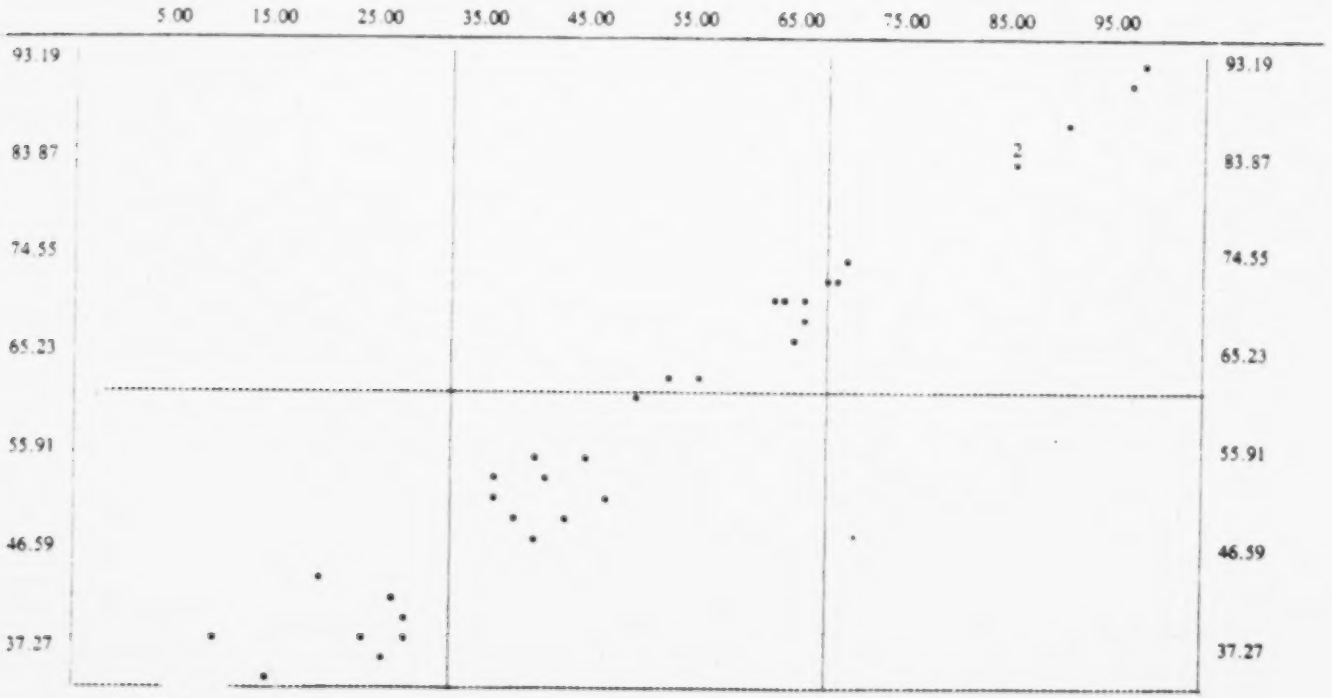
SUMMARY TABLE

Variable	Multiple R	R Square	RSQ Change	Simple R	B	Beta
Black %	0.98831	0.97675	0.97675	0.98831	0.84520	0.99000
Income	0.98831	0.97675	0.00001	−0.51291	0.00003	0.00324
(Constant)					7.00191	

Scattergram Reed % with Black %
Statistics All

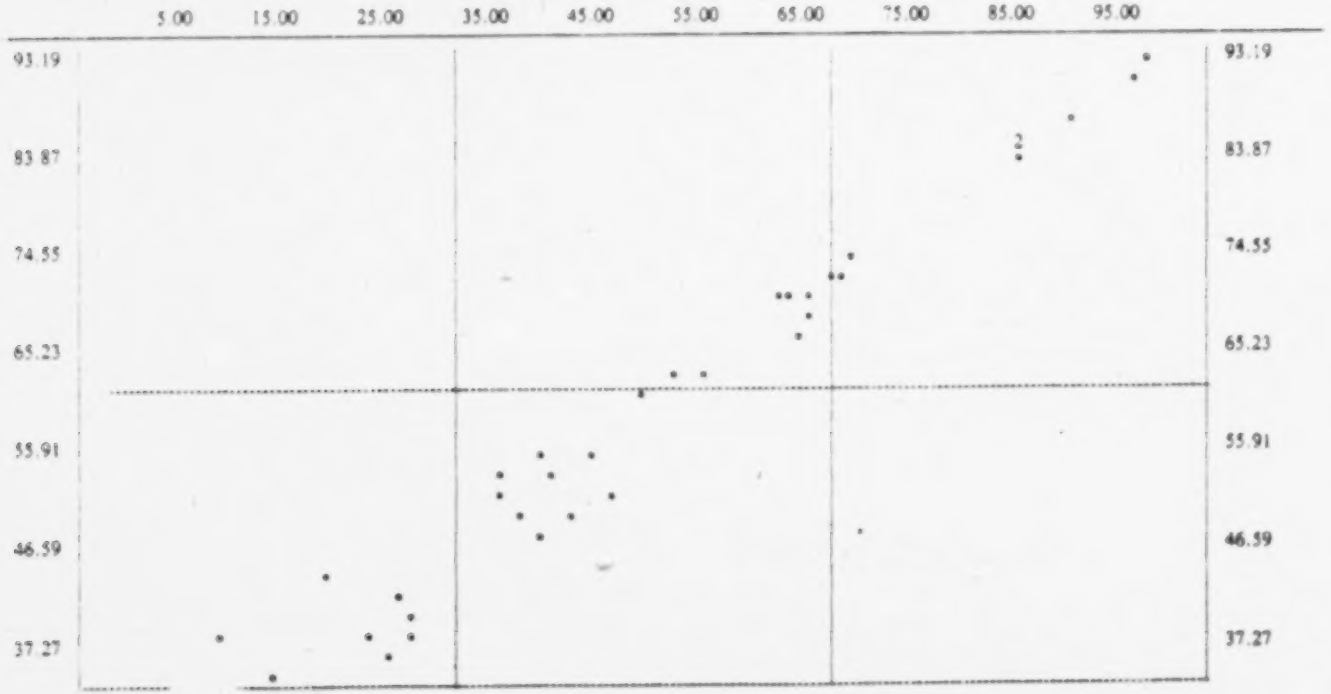
Given space allows for 1831 Cases for 'Scattergram'

FILE ANAL80 (CREATION DATE =
SCATTERGRAM OF (DOWN) REED % (ACROSS) BLACK %

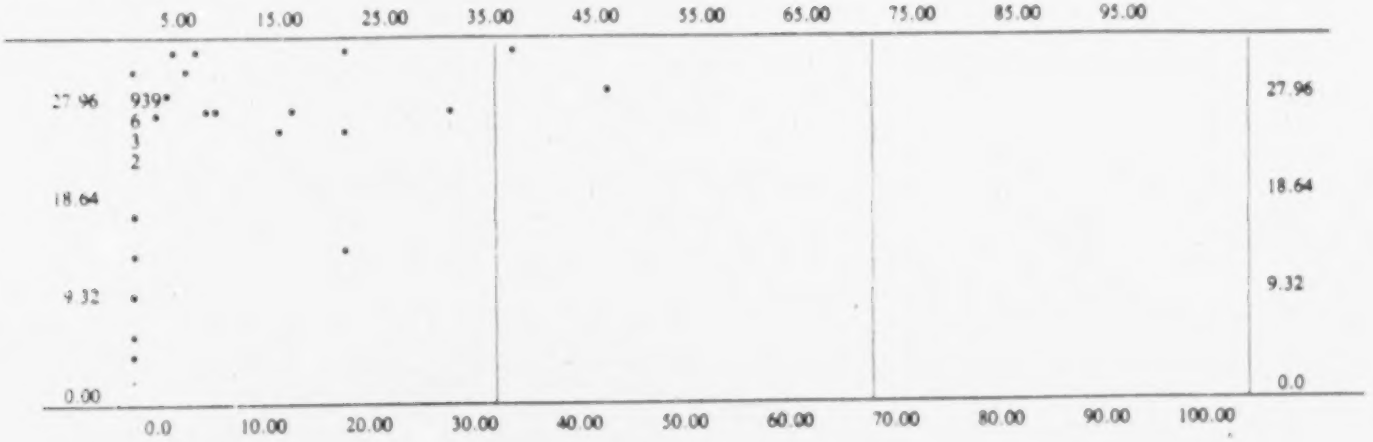


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FILE ANAL80 (CREATION DATE =
SCATTERGRAM OF (DOWN) REED % (ACROSS) BLACK %



FILE ANAL80 (CREATION DATE =
SCATTERGRAM OF (DOWN) REED % (ACROSS) BLACK %



```
Regression Variables = BLACK %, REED %, INCOME, TURNOUT/
          Regression =REED %, WITH BLACK %, INCOME (9)/
Statistics  1, 2

***** Regression problem requires      480 Bytes, workspace, not in-
cluding residuals *****
```

Variable	Mean	Standard Dev	Cases
BLACK %	17.2300	26.9808	111
REED %	21.8739	23.0345	111
INCOME	8927.8108	2156.4789	111
TURNOUT	49.8689	6.5020	111

CORRELATION COEFFICIENTS

A value of 99.00000 is printed if a coefficient cannot be computed.

	Black %	Reed %	Income	Turnout
BLACK %	1.00000	0.98831	−0.52137	0.04373
REED %	0.98831	1.00000	−0.51291	−0.00379
INCOME %	−0.52137	−0.51291	1.00000	0.29879
TURNOUT %	0.04373	−0.00379	0.29879	1.00000

COUNTY COMMISSIONER FIRST PRIMARY, DISTRICT 2, 1966

MULTIPLE REGRESSION
Variable List 1 – Regression List 1

DEPENDENT VARIABLE . . . REED %

Variables entered on Step Number 1 . . . Black %

Multiple R	0.98831	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.97675	Regression	1.	57007.55184	57007.55184	4578.62302
Adjusted R Square	0.97675	Residual	109.	1357.13797	12.45081	
Standard Error	3.52857					

---------- Variables in the Equation ----------

Variable	B	Beta	Std Error B	F
Black %	0.84875	0.98831	0.01247	4578.623
(Constant)	7.33603			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F
Income	0.00324	0.01815	0.72818	0.036

Variable(s) entered on Step Number 2 ... INCOME

Multiple R	0.98831	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.97675	Regression	2.	57007.99877	28503.99939	2269.07369
Adjusted R Square	0.97654	Residual	108.	1356.69104	12.56195	
Standard Error	3.54428					

PAGE 13

Run Name	Board of County Commissioners, First Primary, District 5, 1968
File Name	ANAL60
Variable List	INCOME, WDEM, WREP, WOTHERS, NDEM, NREP, NOTHERS, C1, C2, C3, C4, C5, C6, C7
Input Format	Fixed (T8, F5.0/T6, 2F4.0, F3.0, F4.0, 2F3.0/12X, 7 (F4.0, 3X))

Ignoring indefinite repetition, the input format provides for 14 variables. 14 will be read. It provides for 3 records ('Cards') per case. A maximum of 61 'columns' are used on a record.

No. of Cases	112
Input Medium	Card
Compute	White = WDEM + REP + WOTHERS
Compute	Repubs = WREP + NREP
Compute	Black = NDEM + NREP + NOTHERS
Compute	Total = White + Black
Compute	Black % = Black/Total * 100
Compute	Repubs % = Repubs/Total * 100
Compute	Vote = C1 + C3 + C4 + C5 + C6 + C7
Compute	Turnout + Vote/Total * 100
Compute	Armour % = C1/Vote * 100
Compute	Jenkins % = C3/Vote * 100
Transform	

Item	Actual	Maximum
Vars Recoded	0	100
Values Recoded	0	1044
Transformations	10	261
Math Operators	22	2088
Literal Values	2	194

```
Read Input Data
Regression      Variables = Black %,
                Armour %, Jenkins %, Income, Turnout/
                Regression = Armour % with Black %, In-
                come (1)/
                Regression = Jenkins % with Black %, In-
                come (1)/
Statistics      1, 2

****Regression problem requires      640 Bytes workspace, not in-
cluding residuals****
```

Variable	Mean	Standard Dev	Cases
BLACKS %	17.5091	27.5384	111
ARMOUR %	45.1085	15.2136	111
JENKINS %	23.7283	23.3418	111
INCOME	8927.8108	2156.4789	111
TURNOUT	51.2854	7.3583	111

MULTIPLE REGRESSION
Variable List 1 – Regression List 1

DEPENDENT VARIABLE . . . ARMOUR %

Variables entered on Step Number 1 . . . Black %

Multiple R	0.88386	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.78122	Regression	1.	19889.76344	19889.76344	389.20611
Adjusted R Square	0.78122	Residual	109.	5570.27278	51.10342	
Standard Error	7.14867					

---------- Variables in the Equation ----------

Variable	B	Beta	Std Error B	F
Black %	−0.48829	−0.88386	0.02475	389.206
(Constant)	53.65804			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F
Income	0.17970	0.32716	0.72519	12.945

Variable(s) entered on Step Number 2 . . . INCOME

Multiple R	0.89701	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.80463	Regression	2.	20485.98626	10242.99313	222.40292
Adjusted R Square	0.80284	Residual	108.	4974.04997	46.05602	
Standard Error	6.78646					

Variables in the Equation					Variables not in the Equation				
Variable	B	Beta	Std Error B	F	Variable	Beta In	Partial	Tolerance	F
Black %	−0.43625	−0.78966	0.02759	249.982					
Income	0.00127	0.17970	0.00035	12.946					
(Constant)	41.42855								

Maximum step reached

SUMMARY TABLE

Variable	Multiple R	R Square	RSQ Change	Simple R	B	Beta
Black %	0.88386	0.78122	0.78122	− 0.88386	−0.43625	−0.78966
Income	0.89701	0.80463	0.02342	0.59366	0.00127	0.17970
(Constant)					41.42855	

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MULTIPLE REGRESSION
Variable List 1 – Regression List 2

DEPENDENT VARIABLE . . . JENKINS %

Variables entered on Step Number 1 . . . Black %

Multiple R	0.97271	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.94616	Regression	1.	56705.71693	56705.71693	1915.62132
Adjusted R Square	0.94616	Residual	109.	3226.58925	29.60174	
Standard Error	5.44075					

---------- Variables in the Equation ----------

Variable	B	Beta	Std Error B	F
Black %	0.82448	0.97271	0.01884	1915.621
(Constant)	9.29243			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F
Income	0.01384	0.05079	0.72519	0.279

Variable(s) entered on Step Number 2 . . . INCOME

Multiple R	0.97278	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.94630	Regression	2.	56714.04174	28357.02087	951.61797
Adjusted R Square	0.94581	Residual	108.	3218.26443	29.79874	
Standard Error	5.45887					

---------- Variables in the Equation ----------

Variable	B	Beta	Std Error B	F
Black %	0.83063	0.97996	0.02219	1400.677
Income	0.00015	0.01384	0.00028	0.279
(Constant)	7.84735			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F

Maximum step reached

SUMMARY TABLE

Variable	Multiple R	R Square	RSQ Change	Simple R	B	Beta
Black %	0.97271	0.94616	0.94616	0.97271	0.83063	0.97996
Income	0.97278	0.94630	0.00014	−0.49988	0.00015	0.01384
(Constant)					7.84735	

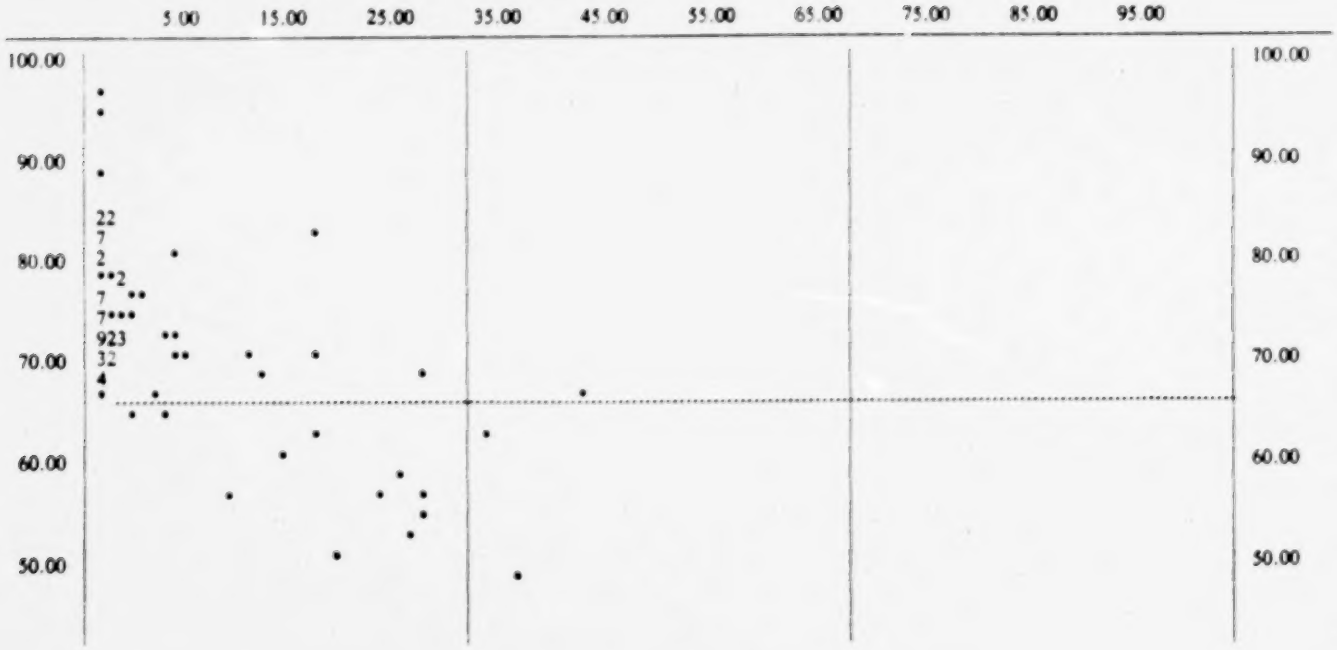
Scattergram Armour % (0,100) Jenkins % (0,100) with Black % (0,100)

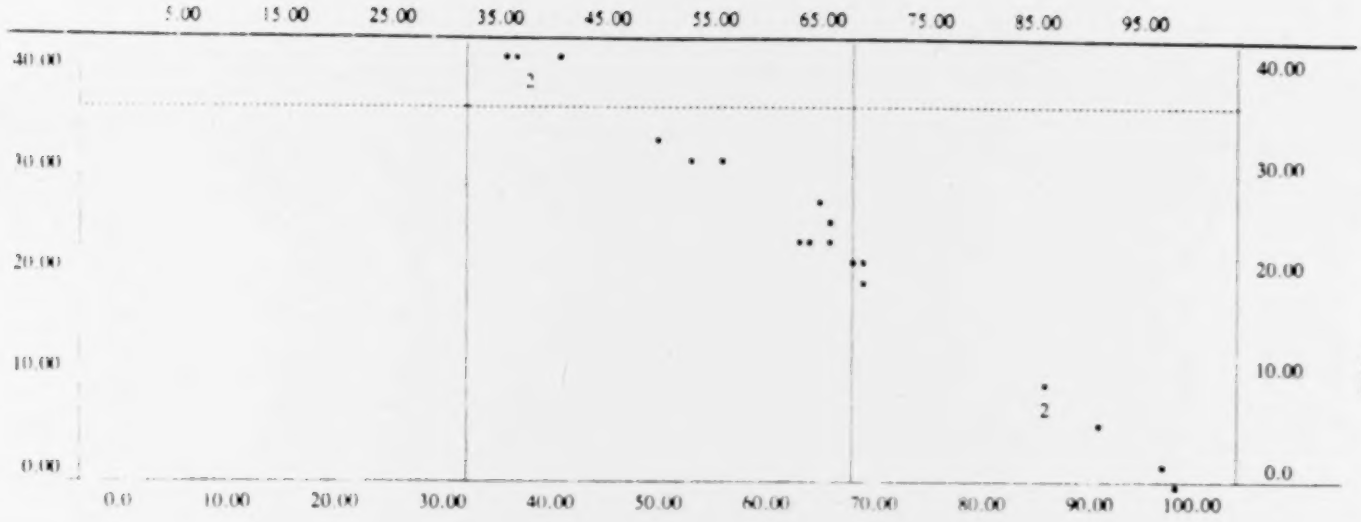
Options 7

Statistics All

Given space allows for 1373 cases for 'Scattergram'

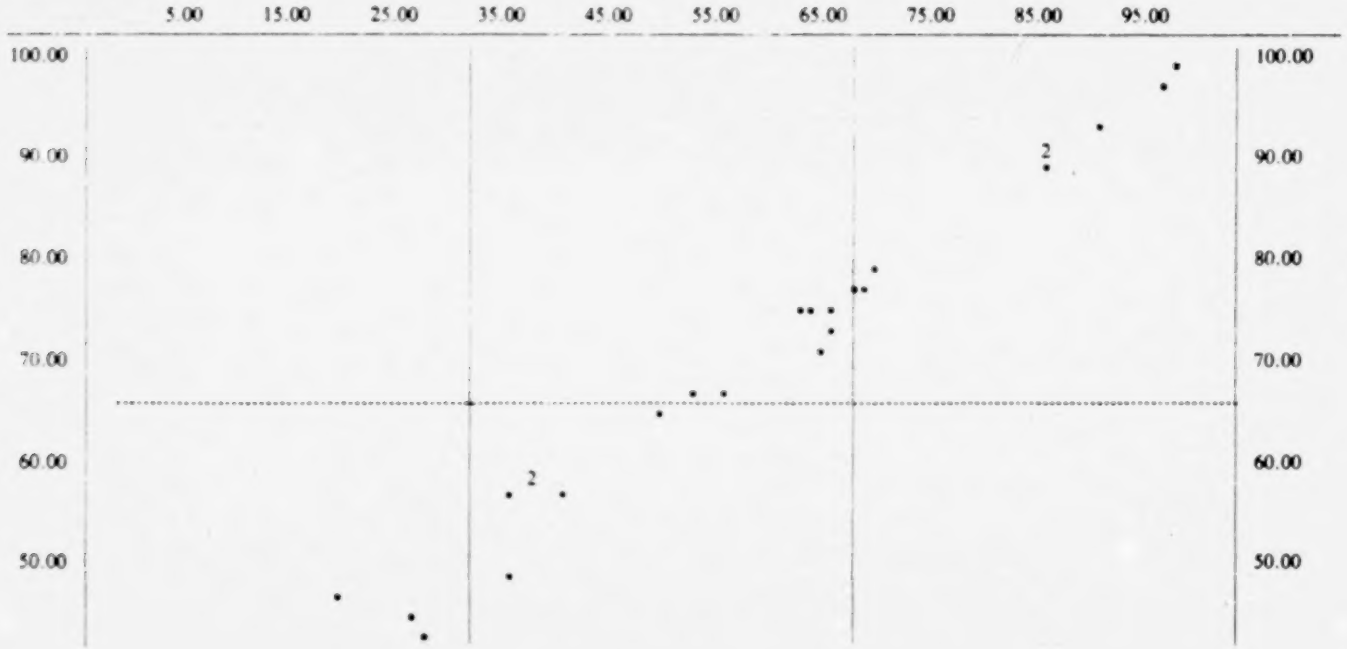
FILE ANAL55 (CREATION DATE =
SCATTERGRAM OF (DOWN) ARMOUR % (ACROSS) BLACK %

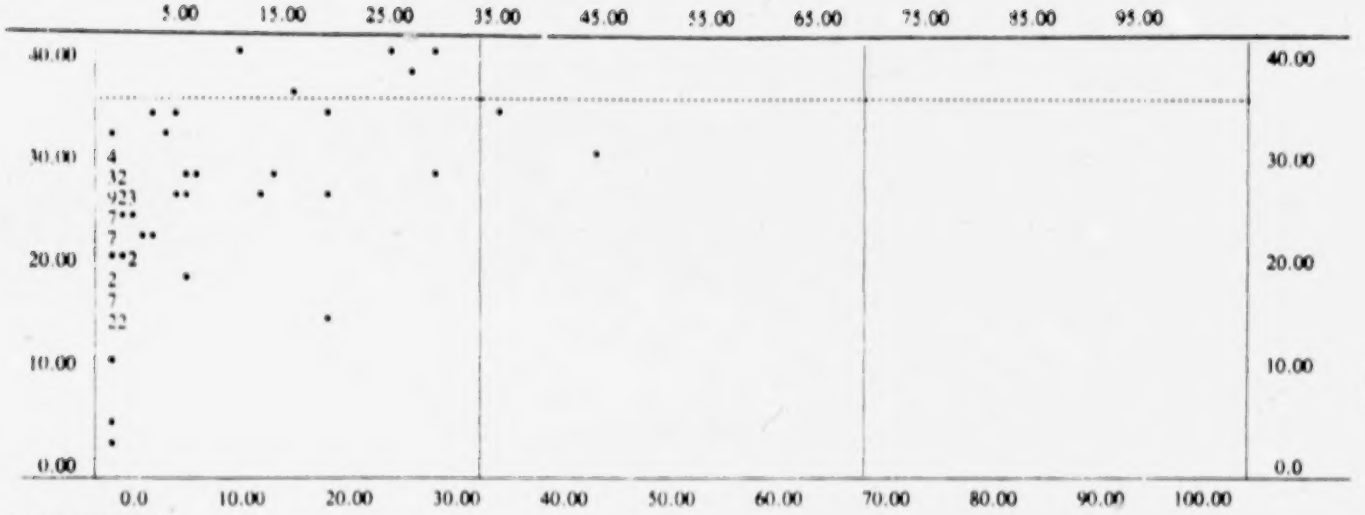



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60.00
70.00
80.00
90.00
100.00

752

FILE ANAL55 (CREATION DATE =
SCATTERGRAM OF (DOWN) JENKINS % (ACROSS) BLACK %





STATISTICS . . .

Correlation (R) –	0.95311	R Squared –	0.90841	Significance –	0.00001
Std Err of Est –	6.55454	Intercept (A) –	22.49915	Slope (B) –	0.74764
Plotted Values –	112	Excluded Values –	0	Missing Values –	0

'••••••••' is printed if a coefficient cannot be computed.

This SPSS job has terminated normally. The job processed 31 control cards. During the job 0 errors were detected.

STATISTICAL PACKAGE FOR THE SOCIAL SERVICES (SPSSGC31, 03/25/75)

Run Name	Board of County Commissioners, 2nd Primary, District 5, 1968
Full Name	ANAL55
Variable List	INCOME, WDEM, WREP, WOTHERS, NDEM, NREP, NOTHERS, C1, C2, C3, C4, C5, C6, C7
Input Format	Fixed (T8, F5.0/T6, 2F4.0, F3.C, F4.0, 2F3.0/12X, 7 (F4.C, 3X))

Ignoring indefinite repetition, the input format provides for 14 variables. 14 will be read. It provides for 3 records ('Cards') per case. A maximum of 61 'columns' are used on a record.

No. of Cases	112
Input Medium	Card
Missing Values	Income (C)
Compute	White = WDEM + WREP + WOTHERS
Compute	Repubs = WREP + NREP
Compute	Black = NDEM + NREP + NOTHERS
Compute	Total = White + Black
Compute	Black % = Black/Total * 100
Compute	Repubs % = Repubs/Total * 100
Compute	Vote = C1 + C2 + C3 + C4 + C5 + C6 + C7
Compute	Turnout + Vote/Total * 100
Compute	Armour % = C1/Vote * 100
Compute	Jenkins % = C2/Vote * 100
Transform	

Item	Actual	Maximum
Vars Recoded	0	100
Values Recoded	0	1044
Transformations	10	261
Math Operators	22	2088
Literal Values	2	194

Read Input Data

Regression Variables = Black %,
Armour %, Jenkins %, Income, Turnout/
Regression = Armour % with Black %, Income (1)/
Regression = Jenkins % with Black %, Income (1)/

Statistics 1, 2

****Regression problem requires 640 Bytes workspace, not including residuals****

Variable	Mean	Standard Dev	Cases
Black %	17.5091	27.5384	111
Armour %	64.3918	21.6196	111
Jenkins %	35.6082	21.6196	111
Income	8927.8108	2156.4789	111
Turnout	49.5959	7.8004	111

	Black %	Armour %	Jenkins %	Income	Turnout
Black %	1.00000	−0.95298	0.95298	−0.52422	0.11770
Armour %	−0.95298	1.00000	−1.00000	0.46055	0.00538
Jenkins %	0.95298	−1.00000	1.00000	−0.46055	−0.00538
Income	−0.52422	0.46055	−0.46055	1.00000	0.03694
Turnout	0.11770	0.00538	−0.00538	0.03694	1.00000

MULTIPLE REGRESSION
Variable List 1 – Regression List 1

DEPENDENT VARIABLE . . . Armour%

Variables entered on Step Number 1 . . . Black %

Multiple R	0.95298	Analysis of Variance	DF	Sum of Squares	Mean Square	F
Square	0.90817	Regression	1.	46693.21274	46693.21274	1077.95741
Adjusted R Square	0.90817	Residual	109.	4721.48542	43.31638	
Standard Error	6.58152					

---------- Variables in the Equation ----------

Variable	B	Bet	Std Error B	F
Black %	−0.74816	−0.95298	0.02279	1077.957
(Constant)	77.49131			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F
Income	−0.05381	−0.15121	0.72519	2.527

Variable(s) entered on Step Number 2 . . . INCOME

Multiple R	0.95408	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.91027	Regression	2.	46801.16618	23400.58309	547.79353
Adjusted R Square	0.90945	Residual	108.	4613.53198	42.71789	
Standard Error	6.53589					

Variables in the Equation					Variables not in the Equation				
Variable	B	Beta	Std Error B	F	Variable	Beta In	Partial	Tolerance	F
Black %	−0.77030	−0.98119	0.02657	840.301					
Income	−0.00054	−0.05381	0.00034	2.527					
(Constant)	82.69513								

Maximum step reached

SUMMARY TABLE

Variable	Multiple R	R Square	RSQ Change	Simple R	B	Beta
Black %	0.95298	0.90817	0.90817	−0.95298	−0.77030	−0.98119
Income	0.95408	0.91027	0.00210	0.46055	−0.00054	−0.05381
(Constant)					82.69513	

MULTIPLE REGRESSION
Variable List 1 – Regression List 2

DEPENDENT VARIABLE . . . Jenkins %

Variables entered on Step Number 1 . . . Black %

Multiple R	0.95298	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.90817	Regression	1.	46693.21461	46693.21461	1077.95763
Adjusted R Square	0.90817	Residual	109.	4721.48464	43.31637	
Standard Error	6.58152					

---------- Variables in the Equation ----------

Variable	B	Bet	Std Error B	F
Black %	0.74816	0.95298	0.02279	1077.958
(Constant)	22.50867			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F
Income	0.05381	0.15121	0.72519	2.527

Variable(s) entered on Step Number 2 . . . INCOME

Multiple R	0.95408	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.91027	Regression	2.	46801.16823	23400.58411	547.79367
Adjusted R Square	0.90945	Residual	108.	4613.53103	42.71788	
Standard Error	6.53589					

---------- Variables in the Equation ----------

Variable	B	Beta	Std Error B	F
Black %	0.77030	0.98119	0.02657	840.301
Income	0.00054	0.05381	0.00034	2.527
(Constant)	17.30485			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F

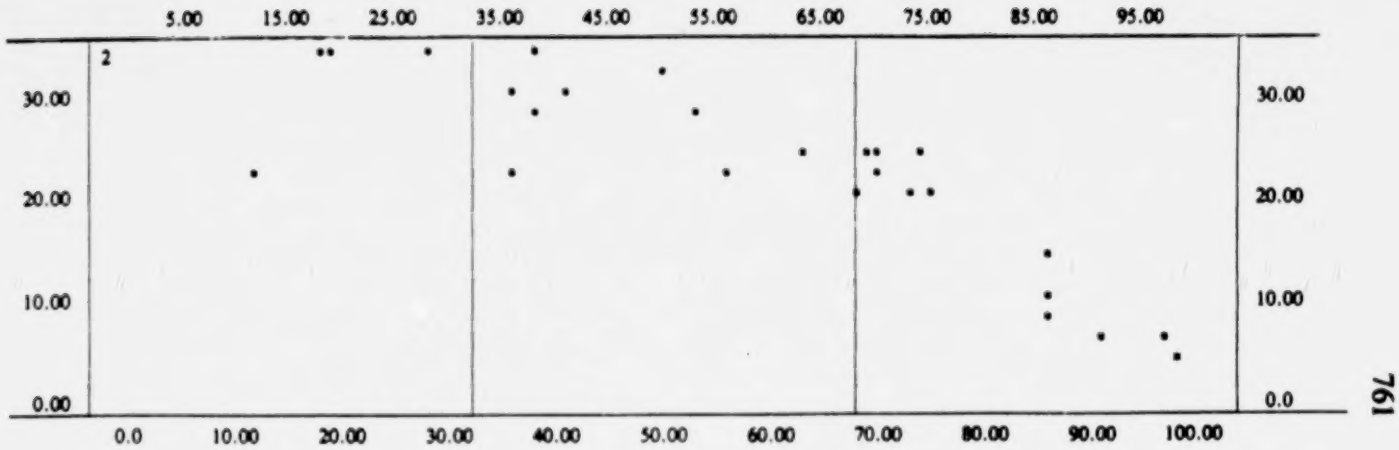
Maximum step reached

SUMMARY TABLE

Variable	Multiple R	R Square	RSQ Change	Simple R	B	Beta
Black %	0.95298	0.90817	0.90817	0.95298	0.77030	0.98119
Income	0.95408	0.91027	0.00210	−0.46055	0.00054	0.05381
(Constant)					17.30485	

Scattergram Armour % (C, 100) Jenkins % (0.100) with Black % (C, 100)
Options 7
Statistics All

Given space allows for 1373 Cases for 'Scattergram'



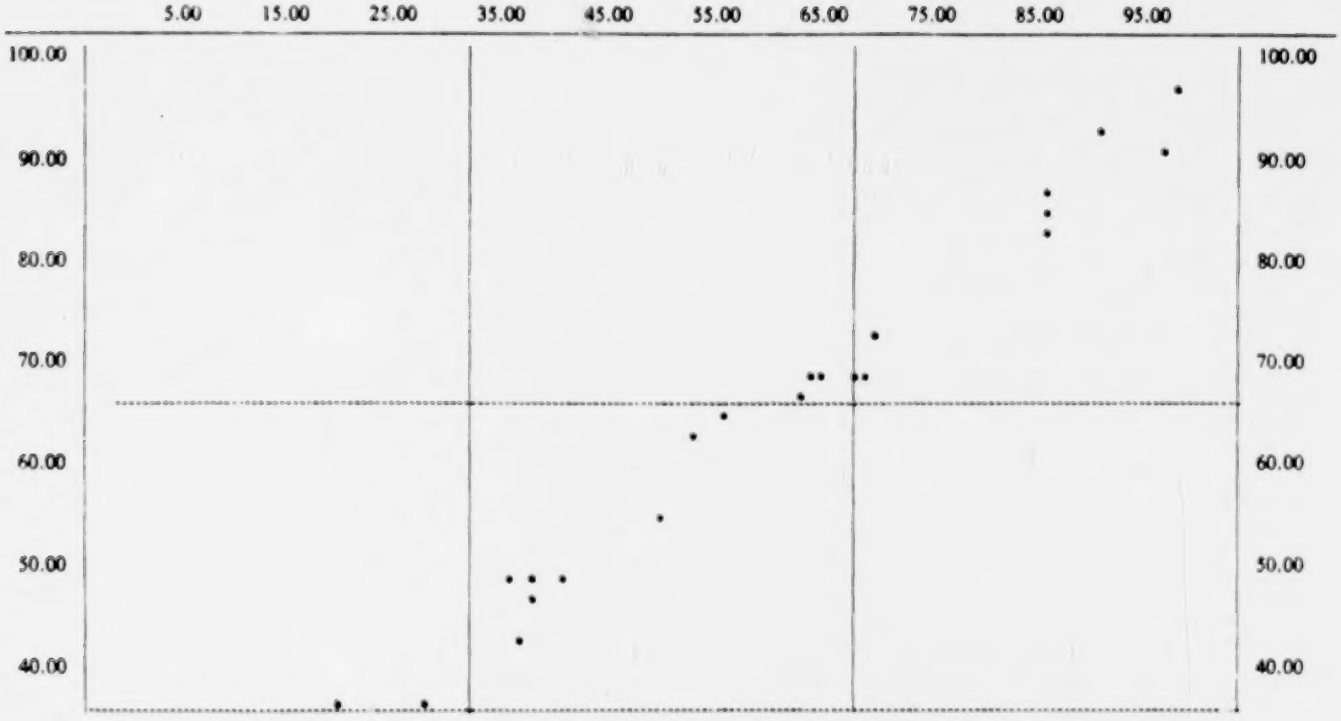
STATISTICS . . .

Correlation (R) –	– 0.88260	R Squared –	0.77899	Significance –	0.00001
Std Err of Est –	7.23039	Intercept (A) –	53.59659	Slope (B) –	0.49164
Plotted Values –	112	Excluded Values –	0	Missing Values –	0

'.' is printed if a coefficient cannot be computed.

This SPSS job has terminated normally. The job processed 11 control cards. During the job 0 errors were detected.

FILE ANAL80 (CREATION DATE =
SCATTERGRAM OF (DOWN) JENKINS % (ACROSS) BLACK %



PAGE 17

STATISTICAL PACKAGE FOR THE SOCIAL SCIENCES (SPSSG031, 03/25/75)

Run Name	County Commissioner, First Primary, District 4, 1970
File Name	ANAL62
Variable List	INCOME, REPUBS, DEMUS, OPS, MALE, FEMALE, WHITE, BLACK, OTHER, C1, C2, C3, C4, C5, C6, C7
Input Format	Fixed (5X, F5.0/ 5X, 3F4.0/ 5X, 4F4.0, F.30/ 9X, 7(3X, F4.0))

Ignoring indefinite repetition, the input format provides for 16 variables. 16 will be read. It provides for 4 records ('Cards') per case. A maximum of 58 'columns' are used on a record.

No. of Cases	112
Input Medium	Card
Compute	Total = Male + Female
Compute	Vote = C1 + C2 + C3 + C4 + C5 + C6 + C7
Compute	Turnout + Vote/Total * 100
Missing Values	Income (0)
Compute	Black % = Black/Total * 100
Compute	Repubs % = Repubs/Total * 100
Compute	Female % = Female/Total * 100
Compute	Kenney % = C3/Vote * 100
If	(Female % EQ 0) Black = 999
Assign Missing	Female % (0) Black % (999)
Transform	

Item	Actual	Maximum
Vars Recoded	0	100
Values Recoded	0	1044
Transformations	9	261
Math Operators	19	2088
Literal Values	3	194

```
Read Input Data
Regression      Variables = Black %,
                Female %, Income, Turnout, Kenney %/
                Regression = Kenney % with Black %,
                Female, Income, (1)/
Statistics      1, 2
```

****Regression problem requires 680 Bytes workspace, not including residuals****

Variable	Mean	Standard Dev	Cases
Blacks	17.5941	27.6069	103
Female	52.6445	3.6474	103
Income	8970.6311	2060.4979	103
Turnout	43.5105	6.7047	103
Kenney %	53.6981	15.6685	103

CORRELATION COEFFICIENTS

A value of 99.00000 is printed if a coefficient cannot be computed.

	Black %	Female %	Income	Turnout	Kenney %
Black %	1.00000	0.72127	−0.50667	−0.39260	−0.92370
Female %	0.72127	1.00000	−0.32762	−0.04831	−0.63779
Income	−0.50667	−0.32762	1.00000	0.44168	0.47157
Turnout	−0.39260	−0.04831	0.44168	1.00000	0.36958
Kenney %	−0.92370	−0.63779	0.47157	0.36958	1.00000

MULTIPLE REGRESSION
Variable List 1 – Regression List 1

DEPENDENT VARIABLE . . . KENNEY %

Variable(s) entered on Step Number 1 . . . Black %

Multiple R	0.92370	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.85321	Regression	1.	21365.52751	21365.52751	587.08037
Adjusted R Square	0.85321	Residual	101.	3675.67778	36.39285	
Standard Error	6.03265					

---------- Variables in the Equation ----------

Variable	B	Beta	Std Error B	F
Black %	−0.52425	−0.92370	0.02164	587.080
(Constant)	62.92186			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F
Female %	0.05929	0.10720	0.47977	1.163
Income	0.00480	0.01080	0.74329	0.012

Variable(s) entered on Step Number 2 . . . FEMALE %

Multiple R	0.92461	Analysis of Variance	DF	Sum of Squares	Mean Square	F
R Square	0.85490	Regression	2.	21407.76643	10703.88321	294.59373
Adjusted R Square	0.85346	Residual	100.	3633.43886	36.33439	
Standard Error	6.02780					

---------- Variables in the Equation ----------

Variable	B	Beta	Std Error B	F
Black %	−0.54852	−0.96646	0.03121	308.846
Female %	0.25472	0.05929	0.23624	1.163
(Constant)	49.93950			

---------- Variables not in the Equation ----------

Variable	Beta In	Partial	Tolerance	F
Income	0.00179	0.00404	0.74031	0.002

F-level or tolerance-level insufficient for further computation.

SUMMARY TABLE

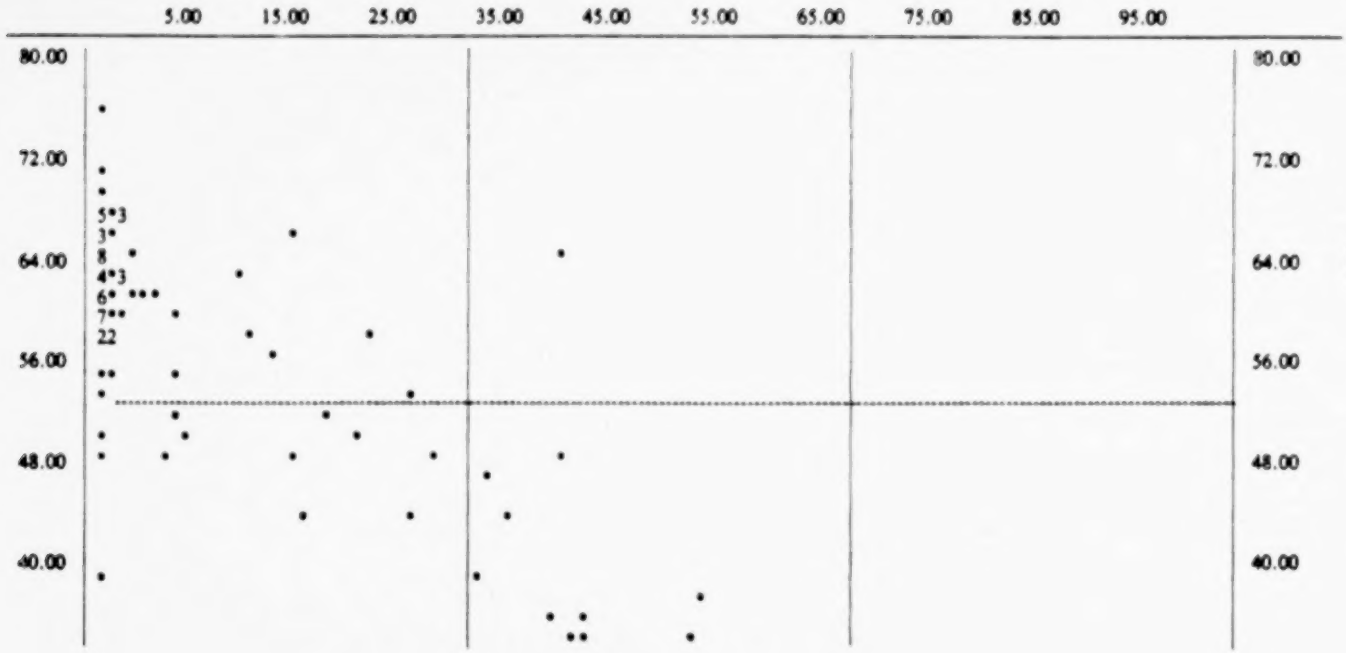
Variable	Multiple R	R Square	RSQ Change	Simple R	B	Beta
Black %	0.92370	0.85321	0.85321	−0.92370	−0.54852	−0.96646
Female %	0.92461	0.85490	0.00169	−0.63779	0.25472	0.05929
(Constant)						

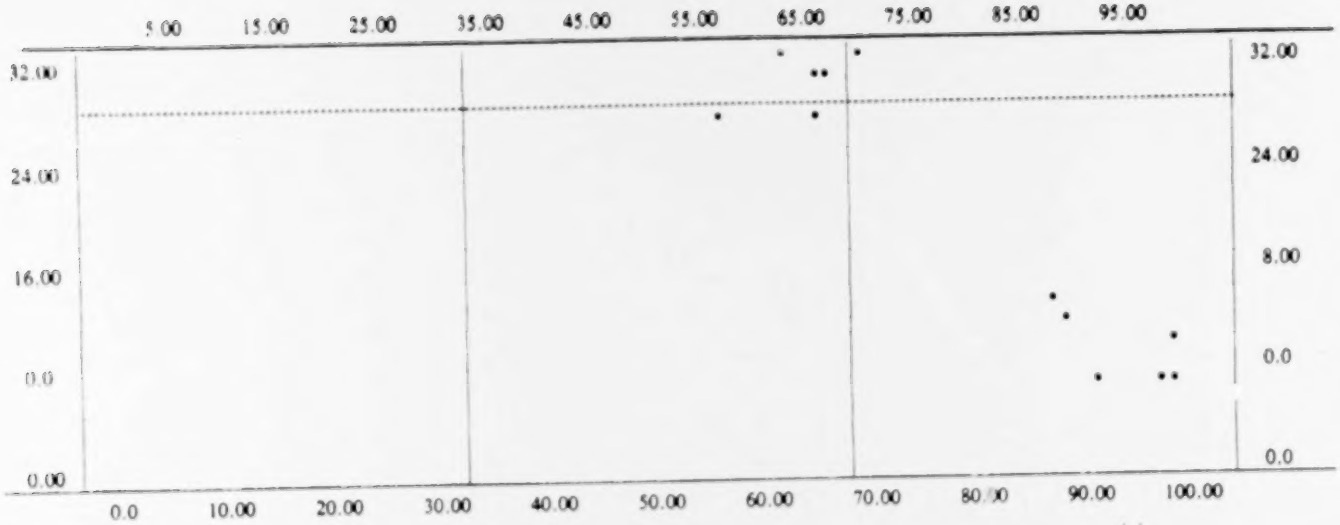
Scattergram	Kenney % with Black %
Options	7
Statistics	All

Given space allows for 1831 Cases for 'Scattergram'

FILE ANAL62 (CREATION DATE =

SCATTERGRAM OF (DOWN) KENNEY (ACROSS) BLACK %





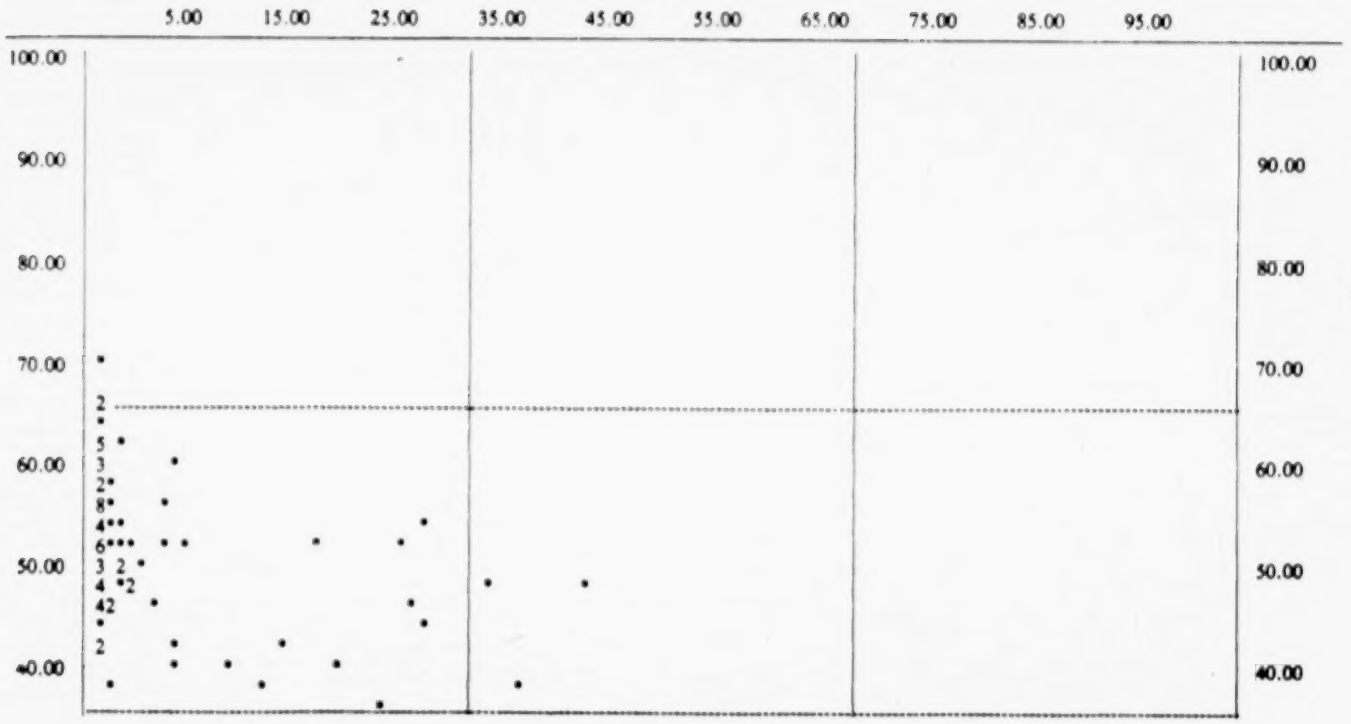
STATISTICS . . .

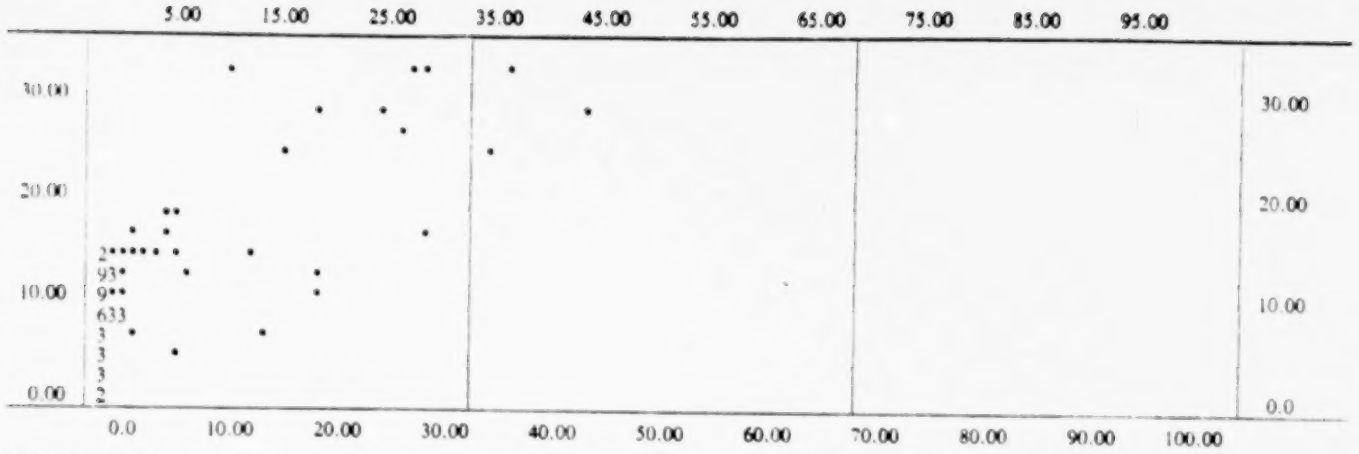
Correlation (R) –	−0.52554	R Squared –	0.27620	Significance –	0.00001
Std Err of Est –	17.93910	Intercept (A) –	56.01934	Slope (B) –	−0.41014
Plotted Values –	112	Excluded Values –	0	Missing Values –	0

'••••••••' is printed if a coefficient cannot be computed.

This SPSS job has terminated normally. The job processed 32 control cards. During the job 0 errors were detected.

FILE ANAL8O (CREATION DATE =
SCATTERGRAM OF (DOWN) ARMOUR % (ACROSS) BLACK %





STATISTICS . . .

Correlation (R) –	– 0.97175	R Squared –	0.94429	Significance –	0.00001
Std Err of Est –	5.51126	Intercept (A) –	9.24346	Slope (B) –	0.82181
Plotted Values –	112	Excluded Values –	0	Missing Values –	0

'••••••••' is printed if a coefficient cannot be computed.

This SPSS job has terminated normally. The job processed 11 control cards. During the job 0 errors were detected.

EXHIBIT 16

Statistical Analysis of Racial Elements in Escambia County, Pensacola City Elections

May 10, 1955 CITY COUNCIL

	Ward 1		r^2	Turnout (r)
		Gilmore		
		Hartley		
		Johnson		
		Mundy*		
1.	Ward 2	Mason*	Black (-) .98	+.25
		Taite (B)	Black (+) .98	
2.	Ward 3	Beadal		
		Bonifay		
		McCullough*	Black (−) .30	-.62
3.	Ward 4	Banfell		
		Suarez		
		Wiggins*	Black (+) .40	-.49
		Wilburn		
4.	Ward 5	Hall		
		Remich*	Black (-) .02	-.77
	At-Large 1	Bryars		
		Drake		
		Jernigan		
		McLaughlin		
		Ruben		
		Sansbury		
	At-Large 2	Erickson*		
		Helie		
	At-Large 3	Bowman		
		Marks		
		Philpot*		

At-Large 4	Gregg
	Jolly*
	Merritt
	Stanley

May 10, 1955

At-Large 5	Greenhut*
	Maher

May, 1959 Primary Elections

Ward 1	Irwin
	Mundy*
	Steiner
	Thornton
Ward 2	O'Gara*
Ward 3	McCullough
Ward 4	Banfell
Ward 5	Humphrey's*
	Remich
At-Large 1	Goldman
	McLaughlin*
	Eddy
	Hagler
At-Large 2	Macon
	Savell
	Woerner*
At-Large 3	Cotita
	Edmonds
	Philpot*
At-Large 4	Dracos
	Hatcher
	Jones

Kelson
Saurez
Wiggins
Wilburn

CITY COUNCIL

May, 1950

At-Large 5	Fredrickson
	Hensley
	Johnson
	Miller

May, 1959 General Election

Ward 1	Mundy
	Thornton*
Ward 2	O'Gara
Ward 3	McCullough
Ward 4	Banfell
Ward 5	Humphrey's
At-Large 1	McLaughlin
At-Large 2	Macon
	Woerner
At-Large 3	Philpot
At-Large 4	Dracos
	Kelson
At-Large 5	Miller

May, 1961 Primary Election

5. Ward 1

Group 1	Edmond
	Malone
	Middlebrooks

	Overman*		
	Philpot		
	Smith		
	Woodcock		
Group 2	Boleward		
	Bryant		
	Farrar		
	Gothard		
	Jackson		
	McLaughlin		
	White		
Ward 2			
Group 1	Capaduca		
	Drexler		
	Hagler		
	Jernigan		
	Woerner		
Group 2	Gonzalez		
	Gregg		
	Hall		
	Macon		
	O'Gara		
	Taylor		
	Wilkinson		
Ward 3			
Group 1	Alfred		
	Barnes		
	Greenhut		
	McCullough		
Group 2	Bowman	Black (-) .15	-.62
	Humphreys		
	Morgan		

	Ward 4			
	Group 1	Banfell		
		O'Donovan		
		Steele		
		Wiggins		
	Group 2	Kelson	Black (+) .20	-.60
		Penton		
		Wilburn		
	Ward 5			
	Group 1	Bryars		
		Holm	Black (-) .28	-.59
		Thornton		
	Group 2	Densmore		
		Frenkel		
		Merritt		
		Neal		
		White		

CITY COUNCIL

May, 1961		General Election	r^2	Turnout (r)
5.	Ward 1			
	Group 1	Malone		
		Overman		
	Group 2	Gothard		
		McLaughlin		
	Ward 2			
	Group 1	Drexler		
		Woerner		
	Group 2	O'Gara		
		Wilkinson		
	Ward 3			
	Group 1	Greenhut		

	Group 2	Bowman	(-) .15	-.62
	Ward 4			
	Group 1	Banfell		
		O'Donovan		
	Group 2	Kelson	(+) .20	-.60
	Ward 5			
	Group 1	Holm	(-) .27	-.58
	Group 2	Frenkel		
May, 1963		Primary Election	r^2	Turnout (r)
6.	Ward 1			
	Group 1	Bryan		
		Clark		
		Overman*		
		Sizemore		
		Terrell		
	Group 2	Blanchard		
		Merritt		
		Whibbs*	Black (-) .02	-.68
	Ward 2			
	Group 1	Bryars		
		Commyns		
		Holm*		
		Thornton		
		White		
	Group 2	Barberi		
		Bowman		
		Drexler*		
		Godwin		
		Neal		

Ward 3			
Group 1	MacDonald*		
	McCullough		
	Morgan		
	Taylor		
Group 2	Carlin		
	Hart		
	Merrill*		

CITY COUNCIL

May, 1963

Ward 4			
Group 1	Greenhut*	Black (+) .18	-.67
	Hall		
	Liggett		
	Penton		
Group 2	Booker		
	Gonzalez		
	Soule*	Black (-) .52	+.03
	Spence(B)	Black (+) .95	+.03
	Tenant		
Ward 5			
Group 1	Banfell		
	Brown*		
	Humphreys		
	Suarez		
	Wilburn		
Group 2	Duell		
	Kelson*	Black (+) .20	−.72
	O'Donovan		

May, 1965		Primary Election	r^2	Turnout (r)
7.	Ward 1			
	Group 1	Nelson		
		Overman*		
		Stephens		
		Terrell		
		Woodcock		
	Group 2	Blanchard*	Income (-) .34	-.48
		Grantham		
		Hart		
		Whibbs		
	Ward 2			
	Group 1	Bergin		
		Elebash*	Income (+) .48	-.70
		Herrington		
		Thornton		
	Group 2	Bowman*	Black (-) .63	
		Godwin		
		Jones(B)	Black (+) .98	-.23
		Jones, Jr.		
	Ward 3			
	Group 1	Hendrieth(B)	Black (+) .97	-.50
		Johnston		
		MacDonald	Black (-) .58	
	Group 2	McCullough		
		Merrill	Income (+) .56	-.76
	Ward 4			
	Group 1	Greenhut		
	Group 2	Soule		
		Tennant		

	Ward 5			
	Group 1	Beal		
		Bruno*		
	Group 2	Kelson		

CITY COUNCIL

May, 1967

8.	Ward 1			
	Group 1	Camp		
		Stephens		
	Group 2	Overman		
		Pearlman		
	Ward 2			
	Group 1	Elebash		
	Group 2	Schill		
	Ward 3			
	Group 1	Paulk		
	Group 2	Frenkel		
	Ward 4			
	Group 1	Yarbrough		
	Group 2	Liggett		
	Ward 5			
	Group 1	Bruno		
	Group 2	Kelson		

May 13, 1969		Primary Election		r^2	Turnout (r)
9.	Ward 1				
	Group 1	Brown	Black (-)	.07	-.26
		McAdam			
	Group 2	Overman			
		Stephens			
		Morgan			

	Ward 2			
	Group 1	Elebash		
		Marshall (B)	Black (+) .77	-.02
	Group 2	Schill		
		Burelson		
		Johnson		
	Ward 3			
	Group 1	Paulk		
	Group 2	Frenkel	Black (-) .69	-.12
		Hendrieth(B)	Black (+) .84	
		King		
	Ward 4			
	Group 1	Yarbrough		
		Hall		
	Group 2	Hagler		
	Ward 5			
	Group 1	Bruno		
	Group 2	Kelson		
May 27 1969		General Election		
9.	Ward 1			
	Group 1	Brown*		
		Crumpton		
	Group 2	Overman		
	Ward 2			
	Group 1	Elebash		
	Group 2	Schill		
	Ward 3			
	Group 1	Paulk		

	Ward 5	
	Group 1	Bruno
		Crain
		Godwin
		Ward
	Group 2	Kelson

CITY COUNCIL

May 15, 1965

7.	Ward 1	
	Group 1	Overman
		Stephens*
	Group 2	Blanchard*
		Whibbs
	Ward 2	
	Group 1	Elebash
	Group 2	Bowman*
		Jones, Jr.
	Ward 3	
	Group 1	Johnston*
		MacDonald
	Group 2	Merrill
	Ward 4	
	Group 1	Greenhut
	Group 2	Soule
	Ward 5	
	Group 1	Bruno*
	Group 2	Kelson

May, 1967			r^2	Turnout (r)
8.	Ward 1			
	Group 1	Camp*	Income (+) .57	-.70
		Gregory		
		Nelson		
		Stephens		
	Group 2	Blanchard		
		Marcus		
		McAdam		
		Overman*		
		Pearlman	Income (-) .43	-.70
	Ward 2			
	Group 1	Cox		
		Elebash*		
	Group 2	Heinberg		
		Hutcheson		
		Neal		
		Schill*		
		Tringas		
	Ward 3			
	Group 1	Johnston		
		McCullough		
		Paulk*		
	Group 2	Frenkel*	Black (-) .84	-.15
		Hendrieth(B)	Black (+) .84	
	Ward 4			
	Group 1	Yarbrough		
	Group 2	Hall		
		Liggett*		

	Group 2	Frenkel*		
	Ward 4			
	Group 1	Yarbrough		
	Group 2	Hagler		
	Ward 5			
	Group 1	Bruno		
	Group 2	Kelson		

CITY COUNCIL

May 11, 1971			r^2	Turnout (r)
10.	Ward 1			
	Group 1	Brown	Income (+) .14	+.02
		Nelson		
		Morrow		
		Koll		
	Group 2	Balink		
		Rose	Income (+) .64	-.62
		Golden		
		Fairchild		
		McAdam		
		Lancaster		
	Ward 2			
	Group 1	Brockett	Black (-) .90	+.06
		Craighead		
		Marshall(B)	Black (+) .92	+.06
	Group 2	Hendrieth(B)	Black (+) .96	+.02
		Alfred		
		Northup	Income (+) .71	+.02
		Jones		
	Ward 3			
	Group 1	King	Black (+) .20	-.47
		Gentry		
		Cottle		

	Group 2	Frenkel	Black (-) .89	-.12
		Henders-on(B)	Black (+) .89	-.12
	Ward 4			
	Group 1	Kingman Klein Shell Merritt Bryan Hall	Income (+) .52	-.43
	Group 2	Regan Hagler Johnson	Income (+) .67	-.48
	Ward 5			
	Group 1	Humphreys Bruno	Income (-) .34	-.48
	Group 2	Williams(B) Adams Wilson	Black (+) .62	.15
May 25, 1971			r^2	Turnout (r)
10.	Ward 1			
	Group 2	Lancaster Rose*		
	Ward 2			
	Group 2	Alfred Northup*		

May 8, 1973			r^2	Turnout (r)
11.	Ward 1			
	Group 1	Brown	Income (+) .49	-.28
		Hall		
		Roberts		
	Group 2	Rose		-.32
	Ward 2			
	Group 1	Brockett		-.32
	Group 2	Northup		-.33
	Ward 3			
	Group 1	Benjamin(B)		
		Paulk	Black (-) .71	+.18
	Group 2	Frenkel		-.20
	Ward 4			
	Group 1	Klein		-.29
	Group 2	Hagler		-.39
	Ward 5			
	Group 1	Bruno		-.28
	Group 2	Williams(B)		+.16

May 13, 1975		General Election	r^2	Turnout (r)
12.	Ward 1			
	Group 1	Brown*	Income (+) .26	-.33
		Bookout		
		Sanders		
		Goolsby		
	Group 2	Nimmo		
		Rose*	Income (+) .06	-.35

	Ward 2			
	Group 1	Brockett*	Income (+) .60	-.34
		Morrison		
		Neuman		
		Roberts		
	Group 2	Northup*	Income (+) .02	-.31
		Belleau		
		Dane		
	Ward 3			
	Group 1	Paulk*	Female (-) .10	-.19
		Kelly		
	Group 2	Frenkel		-.34
	Ward 4			
	Group 1	Klein	Income (-) .20	-.39
		Causey		
	Group 2	Spence(B)	Black (+) .82	+.15
		Gilmore		
	Ward 5			
	Group 1	Bruno	Black (-) .86	-.10
		Brewer(B)		
	Group 2	Ferraro		
		Porter		
		William(B)	Black (+) .67	+.18
May 10, 1977		General Election	r^2	Turnout (r)
13.	Ward 1			
	Group 1	Bookout		
		Brown*	Race (-) .07	-.12
		White		
	Group 2	Piscitelli		
		Rose*	Income (+) .12	-.12

	Ward 2			
	Group 1	Belleau*	Race (-) .46	-.01
		Fountain		
		Hendrieth(B)	Race (+) .79	-.01
		Pryor*		
	Group 2	Connell		
		Frenkel*	Race (-) .04	-.14
	Ward 3			
	Group 1	Paulk		-.23
	Group 2	Hubacker*	Race (-) .55	-.11
		Ortell		
		Reeves*		
		Sheldt		
	Ward 4			
	Group 1	Klein		-.23
	Group 2	Jones		-.22
	Ward 5			
	Group 1	Bass*		+.13
		Gainer(B)	Black (+) .822	
	Group 2	William(B)		+.08
May 24, 1977		Run-Off-Election	r^2	Turnout (r)
	Ward 1	Brown*		
		White		
	Ward 2	Belleau		
		Pryor*		
	Ward 3	Hubacker		
		Reeves*		

Presidential Election

			r^2	Turnout (r)
14.	1972			
	Nixon		Black (-) .82	-.14
	McGovern		Black (+) .96	
15.	1976			
	Ford		Black (-) .59	-.06
	Carter			

COUNTY COMMISSION

			r^2	Turnout (r)
September 9, 1958				
1.	District 4	Abbott		
		Jones*	Black (+) .25	-.38
2.	District 2	Bosso		
		Cobb*	Black (+) .03	
September, 1960		Democratic Primary		
3.	District 1	Caro*	Black (-) .00	-.60
		Mason		
September 5, 1964		First Primary		
4.	District 3	Albritton*	Black (+) .43	-.55
		Anderson		
		Edwards*	Black (-) .55	
		Fredrickson		
5.	District 1	Caro*	Income (+) .10	-.71
		Macon	Income (-) .10	
September 26, 1964		Second Primary		
6.	District 3	Grady		
		Albritton		
		"Tex"		
		Edwards*	Black (-) .63	-.68

November 3, 1964		General Election		
7.	District 3	Edwards*(D) Lee (R)	Income (-) .39	-.82
May 3, 1966		First Primary		
8.	District 2	Cobb* Fredrickson*	Black (-) .64	+.04
		Reed (B) Ward	Black (+) .98	

COUNTY COMMISSION

			r^2	Turnout (r)
May 3, 1966				
9.	District 4	Abbott* Davis* Hurston	Income (+) .35	-.72
May 24, 1966		Second Primary		
10.	District 2	Cobb* Fredrickson	Black (+) .11	-.56
11.	District 4	Abbott Davis*	Income (-) .35	-.56
May 7, 1968		First Primary		
12.	District 3	Adam Edwards*	Income (-) .01	-.71
		Fredrickson Kirksey Untreiner Lane*	Income (+) .53	
		Varazo		
13.	District 5	Armour*	Black (-) .78	-.14
		Gindl Jenkins*(B)	Black (+) .95	
		Whatley		

May 28, 1968		Second Primary		
14.	District 5	Armour*	Black (-) .91	+12
		Jenkins (B)	Black (+) .91	
15.	District 3	Edwards	Income (-) .16	-.53
		Lane*	Income (+) .16	
November, 1968		General Election	r^2	Turnout (r)
16.	District 1	Chisolm (R)		
		Albritton (D)*		
			Repub. (-) .47	-.45
September 8, 1970		First Primary		
17.	District 4	Davis		
		Dedmond (B)		
		Kenney*	Black (-) .85	-.39
18.	District 2	Barnes*	Black (-) .60	-.32
		Cobb*		
		Kelson		
		Reed(B)		
September 29, 1970		Second Primary		
19.	District 2	Barnes*	Black (-) .09	-.51
		Cobb		
November 3, 1970		General Election		
20.	District 4	Marcus (R)		
		Kenney*(D)	Black (+) .20	-.73
21.	District 2	Fredrickson (R)		
		Barnes*(D)	Black (+) .25	-.78

COUNTY COMMISSION

September 12, 1972		First Primary		
22.	District 1	Albritton*	Income (-) .59	-.58
		Deese*		
		Brand		
		Lee		
23.	District 3	Davis		
		Edwards		
		Lancaster*	Black (-) .10	-.47
		Lane*	Black (+) .12	
October 3, 1972		Second Primary	r^2	Turnout (r)
24.	District 3	Lancaster*	Income)-) .12	-.28
		Lane		
25.	District 1	Albritton*	Income (-) .44	-.45
		Deese		
November 7, 1972		General Election		
26.	District 3	Lancaster* (D)	Repub. (-) .40	-.58
		Meyers (R)		
September 10, 1974		First Primary		
27.	District 4	Bailey		
		Hamm		
		Kenney*	Black (+) .46	-.14
28.	District 2	Barnes*	Income (+) .11	-.37
		Hutson		
		Kelson*	Income (-) .15	
		Meyer		

October 1, 1974		Second Primary		
29.	District 2	Barnes		
		Kelson*	Income (-) .09	-.22
November 5, 1974		General Election		
30.	District 4	Kenney*(D)	Black (+) .71	-.30
		Hentz (R)	Black (-) .71	
31.	District 2	Kelson*(D)	Repub. (-) .46	-.52
		Hall (R)	Repub. (+) .46	
September 7, 1976		First Primary	r^2	Turnout (r)
32.	District 3	Barnes*	Income (+) .21	
		Kelly		
		Lancaster*	Black (+) .30	-.44
		Osburn		
33.	District 5	Armour*	Income (+) .11	-.52
		Beck*	Black (-) .11	
		Brown		
		Gulsby		
34.	District 1	Albritton*	Income (-) .30	-.39
		Deese*	Income (+) .27	
		Hamm		
		Lee		
		McLellan		
		Van Dyke		
September 28, 1976		Second Primary		
35.	District 1	Albritton		
		Deese*	Income (+) .32	-.18
36.	District 3	Barnes		
		Lancaster*	Income (-) .27	-.15
37.	District 5	Armour		
		Beck*	Black (-) .08	-.40

SCHOOL BOARD

September 9, 1958		First Primary	r^2	Turnout (r)
1.	Place 5	Gindl Mondeau Vaughn	Black (-) .07	-.38
2.	Place 4	Bryant Harrison Welch	Black (+) .22	-.24
September 30, 1958		Second Primary		
3.	Place 5	Gindl* Vaughn	Black (-) .07	-.16
4.	Place 4	Bryant Harrison*	Black (+) .12	-.33
May, 1960		First Primary		
5.	Place 3	Anderson McArthur*	Black (+) .13	-.69
6.	Place 2	Bell* Blount* Deese	Black (+) .003	-.65
May, 1960		Second Primary		
7.	Place 2	Bell* Blount	Black (-) .009	-.71
May, 1962		First Primary		
8.	Place 1	Belser* Fillingim* Holmes	Black (-) .31	-.38
9.	Place 5	Gindl* Vaughn	Black (-) .02	-.43

May, 1962	First Primary		r^2	Turnout (r)
10. Place 4	Carr Hanks* Harrison*	Black (-)	.02	-.32
May 29, 1962	Second Primary			
11. Place 1	Belser* Fillingim	Black (-)	.18	-.28
12. Place 4	Hanks* Harrison	Black (-)	.42	-.44
May 5, 1964	First Primary			
13. Place 3	Brown McArthur*	Black (+)	.21	-.78
14. Place 2	Bell* Faircloth	Black (+)	.08	-.80
May 3, 1966	First Primary			
15. Place 4	Anderson Kirkland*	Black (+)	.29	-.62
16. Place 1	Bell McLeod Weiley* White*	Income (+)	.24	-.75
May 24, 1966	(Second Primary Democratic)			
17. Place 1	Wesley* White	Black (-)	.47	-.63
November 8, 1966	General Election		r^2	Turnout (r)
18. Place 4	Kirkland*(D) Leeper (R)	Black (+)	.63	-.44

SCHOOL BOARD

November, 1968		General Election		
19.	Place 2	Bickel (R) West*(D)	Black (+) .58	-.82
20.	Place 3	Valmus (R) McArthur*(D)	Black (+) .64	-.83
November 3, 1970		General Election		
21.	Place 4	Leeper*(R) Leverette (B)(D)	Black (-) .76 Black (+) .76	-.22
22.	Place 1	Wesley (R) Bell, Sr.*(D)	Repub. (-) .53	-.77
September 12, 1972		First Primary		
23.	Place 2	Brady West*	Black (-) .07	-.70
24.	Place 4	Carol Ann Marshal L.D. McArthur*	Income (+) .12 Income (-) .12	-.44
November 7, 1972		Superintendent of Education		
25.		Hall* Stoker	Black (+) .19	-.47
September 10, 1974				
26.	Place 5	Gindl* Robertson	Income (+) .11	-.51

			r^2	Turnout (r)
September 10, 1974				
27.	Place 3	Jenkins*(B)	Black (+) .77	+.16
		Sanders	Black (-) .77	
28.	Place 1	Bell*	Income (-) .11	-.54
		Tanpary		
		Wood*		
October 1, 1974		Democratic Primary		
29.	Place 1	Bell*	Black (+) .16	-.34
		Wood		
November 5, 1974		General Election		
		Jenkins (B)(D)	Black (+) .87	-.07
		Leeper*(R)	Black (-) .88	
31.	Place 1	Bell*(D)	Black(-) .69	-.47
		Stallworth (B)(R)	Black (+) .69	
September 7, 1976		First Primary		
32.	Place 4	C. Marshall*	Black (-) .82	+13
		Spence (B)	Black (+) .91	
		Smith		
33.	Place 2	Edwards		
		Suarez*	Black (-) .40	-.62
		Swain*		
		West		
34.	At-Large			
	Place 7	Bailey*	Black (-) .53	
		Forester		
		Jenkins*(B)	Black (+) .94	+15
		King		

Lee
MacGill
Southard

SCHOOL BOARD

September 28, 1976		Second Primary	r^2	Turnout (r)
35.	At-Large Place 6	Biasco*	Income (+) .18	-.40
		McArthur		
36.	Place 2	Suarez*	Black (-) .61	-.45
		Swain		
37.	At-Large Place 7	Bailey*	Black (-) .87	
		Jenkins (B)	Black (+) .98	+.36
38.	Place 4	C. Marshall*	Black (-) .91	+.42
		Spence(B)	Black (+) .91	
	Superintendent	Chandler		
39.		Stokes*	Black (-) .69	+.02
November 2, 1976		General Election		
40.	Superintendant	Stokes*(D)	Black (+) .69	+03
		Pfeiffer(R)	Black (-) .69	
41.	Place 7	Bailey*(D)	Repub. (-) .71	
		Smith (R)	Repub. (+) .71	-.74
42.	Place 2	Suarez*(D)	Repub. (-) .26	-.76
		Hall (R)		
43.	Place 4	Carol Marshall*(D)	Repub. (-) .43	-.70
		Beal (R)		



exhibit 17

EXHIBIT 17

NEIGHBORHOOD ANALYSIS
PENSACOLA SMSA

ESCAMBIA-SANTA ROSA REGIONAL PLANNING COUNCIL

M. Richard Smith
Chairman

J.B. Boyden, Sr.
Vice-Chairman

Daniel F. Krumel
Executive Director

ESCAMBIA COUNTY:	J. B. Boyden, Sr. Henry Cary Robert Hinson J. Stirling Turner Dr. S.W. Boyd Grady Albritton Harry Blanchard Zearl Lancaster Sybil Dedmond
SANTA ROSA COUNTY:	Leo M. Glenn, Jr. Philip Heasth William Rosasco, III
CITY OF PENSACOLA:	Edward E. Harper Lou Brown Lee Mundy Harold Rose
CITY OF SOUTH FLOMATION:	Edgar Bowman William Willett, Jr.
CITY OF MILTON:	Hiram Cook Byrd Mapoles
CITY OF GULF BREEZE:	M. Richard Smith Richard R. Wetzel
CITY OF JAY:	Rev. C.R. Beal Franklin Lewis

NEIGHBORHOOD
ANALYSIS
PENSACOLA
SMSA

The preparation of this
document was financially
aided through a Federal Grant
from the Department of Housing
and Urban Development under the
urban planning assistance program
authorized by Section 701 of the
Housing Act of 1954 as amended.

Project Number	ESRRPC 73-02
Title	PENSACOLA SMSA NEIGHBORHOOD ANALYSIS
Report Date	JUNE 1973
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Performing Organization	ESCAMBIA-SANTA ROSA REGIONAL PLANNING COUNCIL
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Project Number	FLA. P-1005
Contract Number	FLA. P-1005
Sponsoring Agency	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Address	PENINSULAR PLAZA 661 RIVERSIDE AVENUE JACKSONVILLE, FLORIDA 32204
Type of Report	FINAL
Period Covered	JULY 1, 1972 TO JUNE 30, 1973

Abstract This report is the result of findings relating to the ever-increasing squalor referred to as blight. The report provides an up to date inventory of existing structural condition of housing in the Pensacola SMSA. Blight is further treated in relation to the existing social-pathology of which exist in the designated neighborhood areas. A strategy for the treatment of blight, by local government, is also presented.

Identifiers	DEMOGRAPHY, BLIGHTED AREAS, NEIGHBORHOODS, POPULATIONS, URBAN AREAS, URBAN PLANNING, REGIONAL PLANNING
Availability	"RELEASE UNLIMITED"
	ESCAMBIA-SANTA ROSA REGIONAL PLANNING COUNCIL P.O. BOX 486 PENSACOLA, FLORIDA 32593
	NATIONAL TECHNICAL INFORMATION SERVICE 2285 PORT ROYAL ROAD SPRINGFIELD, VIRGINIA 22151
Security Class	UNCLASSIFIED
Number of Pages	118
Price	$3.00

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12	Neighborhood No. 8	843
13	Neighborhood No. 9	845
14	Neighborhood No. 10	847
15	Neighborhood No. 11	849
16	Neighborhood No. 12	851
17	Neighborhood No. 13	853
18	Neighborhood No. 14	855
19	Neighborhood No. 15	857
20	Neighborhood No. 16	859

21	Neighborhood No. 17	00
22	Neighborhood No. 18	863
23	Neighborhood No. 19	865
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INTRODUCTION

BLIGHT! What is it? Where is it? Why is it? Where is it going? How can it be stopped or eliminated? Should it be stopped or eliminated? If so, to what degree? These brief, general questions appropriately describe the purpose of this neighborhood analysis.

Blight, commonly identified by substandard housing conditions, affects thousands of residents in the Pensacola SMSA, according to the 1970 data published by the U.S. Bureau of the Census. The U.S. Bureau of the Census identified the actual number of residents directly affected by substandard housing conditions; but, blight does effect an additional unidentified portion of the population which is presumably equal to or greater than the number affected.

A solution to the general questions posed will achieve the objective of this study. The objective being to *explicitly* identify a strategy or combination of strategies which are realistic, readily applicable, relatively easily applied, and *will* serve to curtail the squalor delicately referred to as blight.

To investigate the ramifications of blight it was necessary to divide the study area into neighborhoods. This division required the identification of neighborhood isolation techniques; a literature review was conducted to become familiar with neighborhood isolation techniques, Seemingly, each "neighborhood" investigator employed his own unique methods of identifying neighborhood boundaries, enabling him to derive desired data. For instance, some of the descriptors Clarence Perry (1, p. 568) employed were: a geographical area considered an ideal sized elementary school district bounded by major

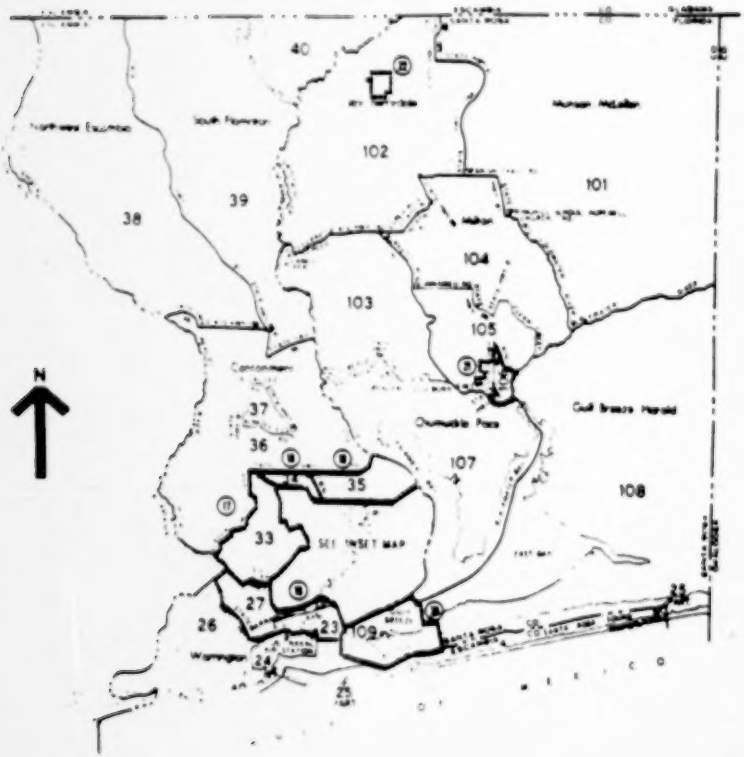
thoroughfares, in addition to possessing neighborhood focal points and neighborhood amenities.

Others have dealt with neighborhoods in the context of common interest, mobility, primary group development, conditional behavior, homogeneity, population density, economics, nationality (race), and geography (2, pp. 569-583).

With these diverse variables in mind, we next identified data sources which were available to us, in conjunction with our budget constraints, and settled upon using a median income – census tract(s) combination as neighborhood descriptors. Contiguous census tracts in which the median family income range did not vary more than $1,000 were grouped together as a "neighborhood". Only two areas, out of 22, did not rigidly conform to the median family income range criteria. The neighborhood and analysis areas are depicted in figures one and two (pp. 3 and 4).

In 1968, the City of Pensacola published a neighborhood analysis of the City of Pensacola and adjacent protions of Escambia County. In 1970, the Escambia-Santa Rosa Regional

FIG. 1 PENSACOLA SMSA NEIGHBORHOODS

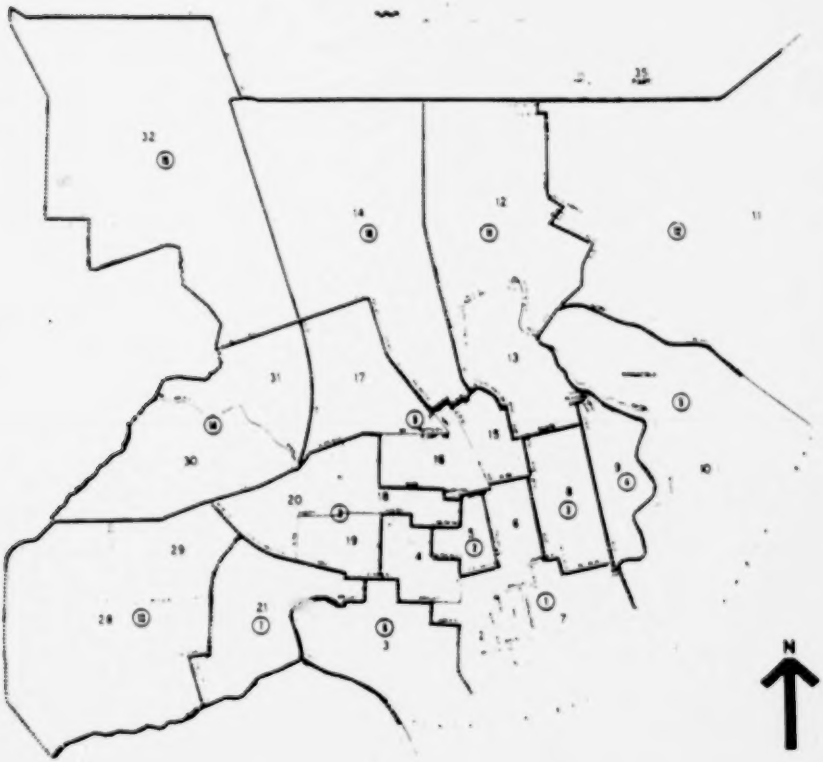


NEIGHBORHOOD BOUNDARIES •••••

CENSUS TRACT BOUNDARIES ——

NEIGHBORHOOD NUMBERS (17)

FIG. 2 URBAN AREA NEIGHBORHOODS



NEIGHBORHOOD BOUNDARIES •••••

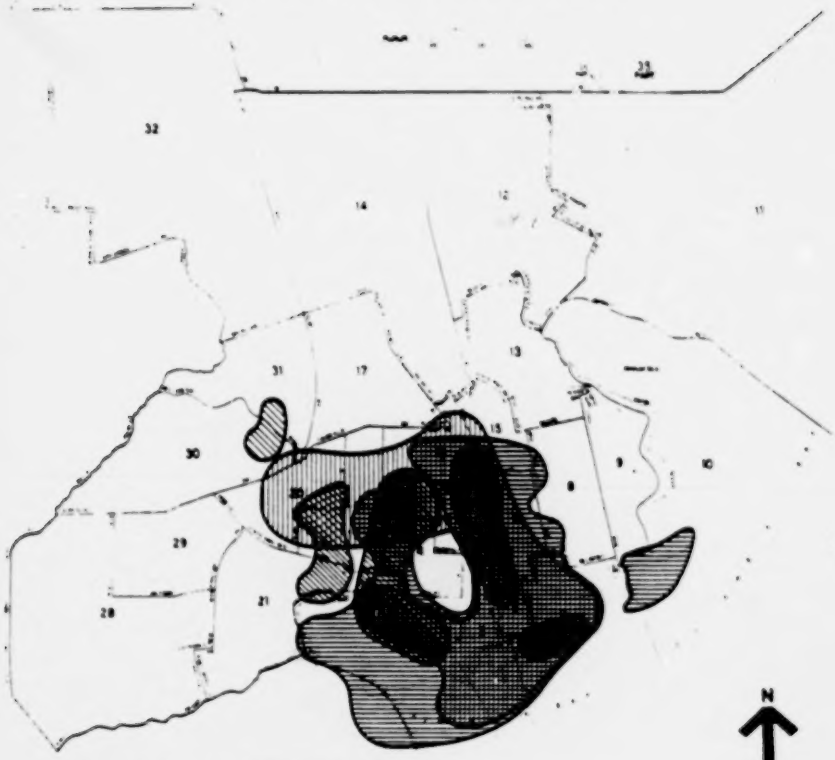
CENSUS TRACT BOUNDARIES ——

NEIGHBORHOOD NUMBERS (17)

Planning Council published a study which identified eight general "blight" areas; the purpose of the study was primarily a housing element and not a blight treatise. The blight locations identified in these studies are shown as part of figure 3 (p. 6).

For the overall study area, data was collected within the realm of five general categories. These categories were: structural and environmental conditions, general social and economic characteristics, population, comunity facilities, and social conditions. A summary of the neighborhood data is provided by Table 1 (pp. 7 and 8).

FIG. 3 HISTORICAL BLIGHT AREAS



BLIGHT AREA BOUNDARIES

1970 CENSUS

PENSACOLA NEIGHBORHOOD ANALYSIS - 1968

REGIONAL PLANNING COUNCIL HOUSING STUDY - 1970

TABLE I. SOCIAL PATHOLOGY TOTALS

NEIGHBORHOOD NUMBER	1	2	3	4	5	6	7	8	9	10	11
V. D.	16	2	0	0	0	0	1	1	9	1	0
T. B.	11	1	1	1	0	1	0	1	2	1	2
FIRES	471	23	51	15	32	104	13	73	76	32	67
DIVISION OF YOUTH SERVICES	24	1	0	0	1	2	0	9	10	3	6
MENTAL HEALTH	21	0	6	1	4	5	7	5	7	3	6
WELFARE	101	7	10	0	2	5	7	25	61	30	14
CRIME	277	12	33	11	21	30	4	14	22	5	31
PARKS (ACRES)	37	2	27	39	25	9	0	5	11	6	25
HOUSING	121	1	4	0	0	8	5	18	100	3	5
UNEMPLOYED	53	4	5	4	4	5	8	12	27	10	21
DRUG ABUSE	10	3	5	2	12	3	3	3	3	1	5

TABLE I. (continued)

NEIGHBORHOOD NUMBER	12	13	14	15	16	17	18	19	20	21	22
V. D.	3	0	1	5	4	2	0	3	0	32	0
T. B.	0	2	2	0	1	1	0	0	0	6	0
FIRES	51	40	34	12	54	4	12	34	13	65	5
DIVISION OF YOUTH SERVICES	5	6	4	2	5	6	0	3	0	0	0
MENTAL HEALTH	6	7	8	3	14	1	1	2	2	5	1
WELFARE	1	12	4	15	20	3	5	3	0	43	17
CRIME	13	2	1	2	16	1	17	4	10	9	0
PARKS (ACRES)	24	12	14	0	55	11	13	9	192	19	2
HOUSING	1	4	3	8	8	1	0	0	0	20	9
UNEMPLOYED	6	16	11	8	14	6	7	18	5	7	0
DRUG ABUSE	7	7	2	4	7	3	1	6	6	1	0

REFERENCES

1. Winholtz, Wilfred G. "Planning and the Public" *Principles and Practice of Urban Planning,* ed. William I. Goodman and Eric C. Freund, Washington, D.C.: International City Manager's Association, 1968.

2. Mann, Peter H. "The Neighborhood", *Neighborhood City, and Metropolis,* ed. Marvin Bressler, New York: Random House, 1970.

II. METHODOLOGY

The data to be collected for the neighborhood analysis, segregated data collection into two separate activities.

One activity involved a structural inventory of a systematic sample (a five percent sample) of the tax parcels listed on the 1971-72 tax rolls of each county.

The second activity involved obtaining a systematic sample (a five percent sample) of selected social-pathology indicators.

A third activity involved statistical manipulation of all collected data in such a manner as to prove or disprove common assumptions of neighborhoods.

The structural survey involved parcel selection, identification, and evaluation. The parcel selection phase was accomplished with the cooperation of the tax assessor's office in both counties of the Pensacola SMSA. A systematic sample (one was the randomly selected initial value) was then obtained from the tax rolls. The sample selected in Santa Rosa County was manually selected due to the absence of a computer capability in that tax office.

In Escambia County the Data Processing Center developed a computer program which would select a five percent sample of the listed tax parcels and print the following data upon a previously prepared form (Figure 4, p. 13) parcel account number, property reference number, owners name, and the *owners* address.

The field survey was conducted by summer employees who lacked experience in structural evaluation. This lack of experience necessitated the development of a training program for the employees. This training program was administered by Mr. Don Roberts, the head of the Minimum

Housing Department of the City of Pensacola. Continuous field checks indicated the training program comprehension was successful in that the field evaluations were extremely accurate. The field evaluations extended from June 18, 1972 to September 15, 1972, during which time 12,183 parcels of property were evaluated.

The field survey data collected consisted of data pertaining to roads, building condition, building occupancy, land use, utilities, and a noise rating (Figure 4, p. 13).

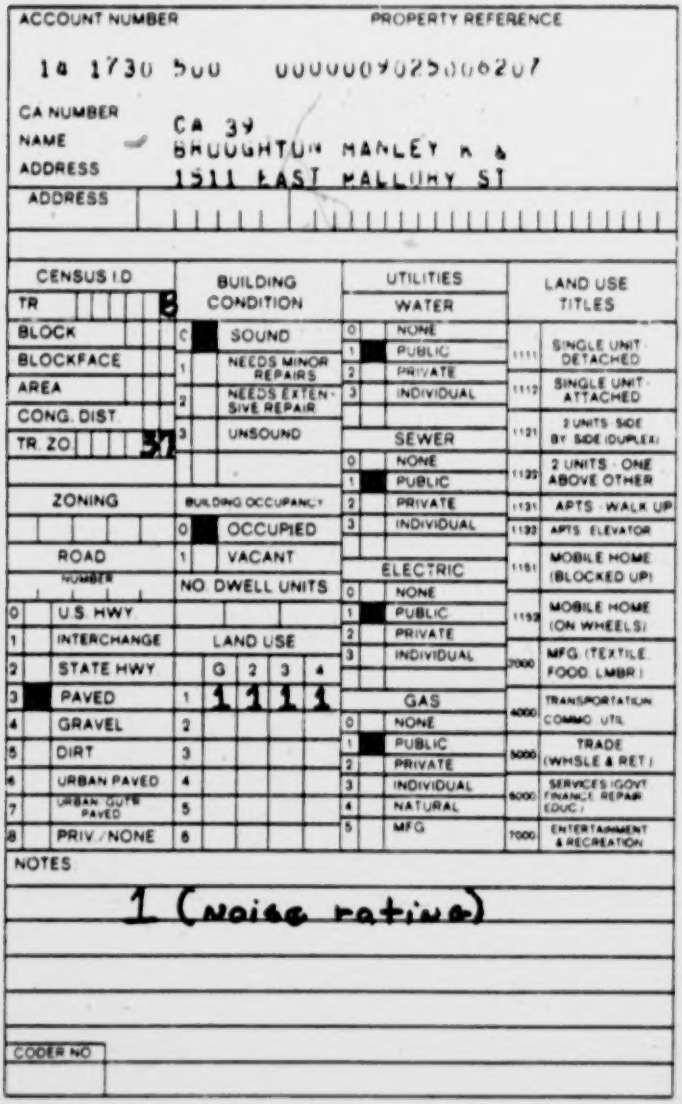
During the last week in August, the social-pathology data collection was initiated. This data was collected by the Regional Planning Council Staff assigned to the neighborhood analysis project.

As was the field survey sample, the social-pathology sample was a systematic sample of available data.

Social pathology indicators for which a five percent sample was collected, were: venereal disease, tuberculosis, fires, juvenile delinquency, mental health, welfare, crime, housing, unemployment, high school dropouts, and drug abuse. The data was recorded by general address; i.e. 800 block of a street instead of 829 such and such a street. The general addresses enabled plotting the data in the proper neighborhood block, on a grid map the scale of which was 1" = 1666'.

Due to the delicate nature of venereal disease data and fear of possible disclosures, the Escambia County Health Department provided a five percent sample for a time period between August 1 and October 30, 1972. The VD data, 180 samples occurring during the sampled time frame, identified type of VD, sex, rate, and age of patient in addition to a general address. All of the cases in the sample were cases of gonorrhea. One must bear in mind

FIG. 4 FIELD SURVEY CARD



ACCOUNT NUMBER: 14 1730 500 — PROPERTY REFERENCE: 0000009025006207

CA NUMBER: CA 39
NAME: BROUGHTON MANLEY R & [illegible]
ADDRESS: 1511 EAST MALLORY ST
ADDRESS:

CENSUS I.D.
TR: 3
BLOCK:
BLOCKFACE:
AREA:
CONG. DIST.:
TR. ZO: 31

ZONING:

ROAD NUMBER:
0 U.S. HWY
1 INTERCHANGE
2 STATE HWY
3 ■ PAVED
4 GRAVEL
5 DIRT
6 URBAN PAVED
7 URBAN GUTR PAVED
8 PRIV./NONE

BUILDING CONDITION
C ■ SOUND
1 NEEDS MINOR REPAIRS
2 NEEDS EXTENSIVE REPAIR
3 UNSOUND

BUILDING OCCUPANCY
0 ■ OCCUPIED
1 VACANT

NO. DWELL UNITS:

LAND USE: G 2 3 4
1 1 1 1

UTILITIES
WATER
0 NONE
1 ■ PUBLIC
2 PRIVATE
3 INDIVIDUAL

SEWER
0 NONE
1 ■ PUBLIC
2 PRIVATE
3 INDIVIDUAL

ELECTRIC
0 NONE
1 ■ PUBLIC
2 PRIVATE
3 INDIVIDUAL

GAS
0 NONE
1 ■ PUBLIC
2 PRIVATE
3 INDIVIDUAL
4 NATURAL
5 MFG.

LAND USE TITLES
1111 SINGLE UNIT DETACHED
1112 SINGLE UNIT ATTACHED
1121 2 UNITS SIDE BY SIDE (DUPLEX)
1122 2 UNITS ONE ABOVE OTHER
1131 APTS. WALK UP
1132 APTS. ELEVATOR
1151 MOBILE HOME (BLOCKED UP)
1152 MOBILE HOME (ON WHEELS)
2000 MFG. (TEXTILE FOOD LMBR.)
4000 TRANSPORTATION COMMO. UTIL.
5000 TRADE (WHSLE & RET.)
6000 SERVICES (GOVT FINANCE REPAIR EDUC.)
7000 ENTERTAINMENT & RECREATION

NOTES: 1 (Noise rating)

CODER NO.:

that the VD sample consists of people who could not afford to be treated by a private physician or patients wishing to keep such information from their family physician. In that respect the VD sample is not all inclusive; but is as complete as feasible due to the fact that private physicians do not reveal this type of information. Venereal disease treated by the Santa Rosa County Health Department occurs either in the City of Milton or its immediate vicinity only, according to the head of the Santa Rosa County Health Department.

Tuberculosis data, only active cases, was also provided by the Escambia and Santa Rosa County Health Department. The time frame for TB, as holds true for the remainder of the social-pathology indicators to be described, was July 1, 1971, through June 30, 1972. Thirty-three TB samples were identified; we feel the sample accurately reflects the active cases due to the willingness to report this type of health problem and the lack of a social stigma such as is associated with VD.

Data on fires, by address and type, were collected by the Regional Planning Council Staff. This data was collected with the utmost cooperation of all volunteer and non-volunteer fire deparetments in the study area. Fire data collected was comprised of: house fires, commercial fires, accidental false alarms, malicious false alarms, fire bombs, and building fires caused by arson.

The data sample collected from the Division of Youth Services consisted of runaways, theft, incorrigibles, shoplifters, truants, discipline cases, and drug abusers.

An active case load sample was obtained from the local mental health agency. The local mental health organization provides outpatient services (psychological evalua-

tion), emergency services (crisis oriented), day treatment (alternative to hospitalization), vocational rehabilitation, inpatient psychiatric services, precare services (adjudication of incompetency), alcohol counseling, drug abuse treatment, learning disabilities, and aftercare services.

The above listing of the mental health agency activities is included to clarify the agency activities and dispell the mentally disturbed stigma historically attached to mental health agency activities. To obtain this sample data it was necessary to make one concession; the drug abuse cases could not be included in our sample. Again this sample does not reflect the entire mental health case load due to affluent persons patronizing private treatment sources.

Crime statistics were obtained from all law enforcement agencies within the study area. Samples selected from daily reports included assault, breaking and entering, theft (grand and petty larceny), murder (100% sample), robbery, vandalism, shootings, suicide and suicide attempts, and disturbances. This data was plotted by address of offender and not by address of the location of the reported offense.

Housing data was a consolidation of the Regional Planning Council field survey and available census data.

Unemployment data consists of those individuals listed with the State Employment Office as unemployed. Although each individual is listed by job classification, age, sex, address, and race, the data shown in chapter three only reflects their place of residence. No determination of underemployment was attempted.

High school dropouts, catagorized by reason for withdrawal and high school, data was provided by the school boards. The majority withdrew due to either a lack

of interest, economic reasons, marriage, military service, school of correction, or unknown reasons.

Narcotics data were obtained from law enforcement agencies and the Division of Youth Services. A probable inaccuracy of narcotics data is due to reporting practices. For example, if a user commits a robbery or a breaking and entering offense for the purpose of obtaining merchandisable items to support his habit, the report lists only the offense committed. Local narcotics agents indicate that at *least* 70 percent of the robberies and breaking and entering offenses are committed by persons with a drug history.

The blight-sociological implications of this data will be developed in full detail in chapter four. The statistical method used to obtain some insights to the blight-social-pathology relationships was Spearman's Rank Correlation (1, p. 97)

$$p = 1 - \frac{6S(D^2)}{N(N^2 - 1)}$$

p = the measure of correlation
D = the difference between two ranks given for each statistic
N = number of statistics

All ties were assigned the average value of their rank order sum.

Table 2, (pp. 18 and 19) is comprised of the correlation values obtained for each social-pathology indicator, neighborhood versus neighborhood. Chapter three will provide the narrative generated by Table 2 (pp. 18 and 19).

TABLE 2 NEIGHBORHOOD VERSUS NEIGHBORHOOD CORRELATION COEFFICIENTS

Neighborhood	1	2	3	4	5	6	7	8	9	10	11
1		.5262	.7360	.6591	.4948	.8881	.4624	.9056	.8269	.6224	.7465
2	.5262		.6713	.6678	.8024	.5787	.4519	.5420	.4755	.6661	.6993
3	.7360	.6713		.6049	.8899	.9318	.5516	.7273	.6014	.6801	.8322
4	.6591	.6678	.6049		.5262	.6836	.1809	.5804	.6888	.7185	.7570
5	.4948	.8024	.8899	.5262		.7430	.4449	.4808	.3427	.5927	.7290
6	.8881	.5787	.9318	.6836	.7430		.4904	.8042	.7010	.6224	.8514
7	.4624	.4519	.5516	.1809	.4449	.4904		.6547	.5621	.6862	.5166
8	.4056	.5420	.7273	.5804	.9808	.8042	.6547		.9021	.7587	.7570
9	.8269	.4755	.6014	.6888	.3427	.7010	.5621	.9021		.7605	.5927
10	.6224	.6661	.6801	.7185	.5927	.6224	.6862	.7587	.7606		8129
11	.7465	.6993	.8322	.7570	.7290	.8514	.5166	.7570	.5927	.8129	
12	.3899	.5586	.6206	.5979	.6888	.6696	.1337	.2780	.1206	.3234	.7150
13	.3759	.4790	.5437	.4371	.6171	.5437	.6180	.5559	.4248	.7290	.6801
14	.2185	.2255	.3934	.4668	.3566	.3794	.5358	.3952	.4117	.7500	.5612
15	.4091	.4441	.2657	.1486	.2640	.2448	.6652	.5594	.6066	.4371	.1381
16	.6206	.6696	.9073	.7115	.8252	.8129	.5463	.6906	.6084	.8724	.8759
17	.0857	.3531	.0787	.5944	.2378	.1591	.0341	.2238	.2430	.5367	.4510
18	.6276	.7115	.6101	.8986	.5507	.6381	.2159	.5420	.6101	.7570	.7587
19	.3374	.8094	.4895	.7465	.6678	.5507	.2841	.3531	.3147	.5892	.6976
20	.4423	.7360	.5839	.7990	.6923	.6346	.0638	.3636	.3566	.4563	.6591
21	.7465	.3147	.4965	.5035	.3287	.5612	.2334	.5979	.7483	.4248	.2850
22	.5175	.4038	.1757	.2177	.1792	.2334	.4353	.6023	.6355	.3593	.1337

LEVEL OF SIGNIFICANCE @ 0.05 = 0.5636

TABLE 2 (continued)

Neighborhood	12	13	14	15	16	17	18	19	20	21	22
1	.3899	.3759	.2185	.4091	.6206	.0857	.6276	.3374	.4423	.7465	.5175
2	.5586	.4790	.2255	.4441	.6696	.3531	.7115	.8094	.7360	.3147	.4038
3	.6206	.5437	.3934	.2657	.9073	.0787	.6101	.4895	.5839	.4965	.1757
4	.5979	.4371	.4668	.1486	.7115	.5944	.8986	.7465	.7990	.5035	.2177
5	.6888	.6171	.3566	.2640	.8252	.2378	.5507	.6678	.6923	.3287	.1792
6	.6696	.5437	.3794	.2448	.8129	.1591	.6381	.5507	.6346	.5612	.2334
7	.6180	.6180	.5358	.6652	.5463	.0341	.2159	.2841	.0638	.2334	.4353
8	.2780	.5559	.3952	.5594	.6906	.2238	.5420	.3531	.3636	.5979	.6023
9	.1206	.4248	.4117	.6066	.6084	.2430	.6101	.3147	.3566	.7483	6355
10	.3234	.7290	.7500	.4371	.8724	.5367	.7570	.5892	.4563	.4248	.3593
11	.7150	.6801	.5612	.1381	.8759	.4510	.7587	.6976	.6591	.2850	.1337
12		.5175	.3462	-.0699	.5699	.4231	.4283	.7972	.7797	.0262	-.1372
13	.5175		.8339	.3986	.6940	.6888	.3252	.6626	.4633	.1311	.2439
14	.3462	.8339		.1888	.6329	.6731	.3636	.4895	.3147	.1031	.0184
15	-.0699	.3986	.1888		.2360	.0892	.0367	.2010	.0087	.5157	.7841
16	.5699	.6940	.6329	.2360		.4047	.7150	.5979	.5734	.4056	.0883
17	.4231	.6888	.6731	.0982	.4047		.4021	.7177	.5472	-.0647	.1198
18	.4283	.3252	.3636	.0367	.7150	.4021		.6084	.7133	.4563	.2072
19	.7972	.6626	.4895	.2010	.5979	.7177	.6084		.8462	.0594	.1809
20	.7797	.4633	.3147	.0087	.5734	.5472	.7133	.8462		.2413	.2124
21	.0262	.1311	.1031	.5157	.4056	-.0647	.4563	.0594	.2413		.5061
22	-.1372	.2439	.0184	.7841	.0383	.1198	.2072	.1809	.2124	.5061	

REFERENCE

1. Arkin, Harold and Cotton, Raymond R. *Statistical Methods.* New York: Barnes & Noble, Inc., 1970

III. NEIGHBORHOOD DELINEATION AND ANALYSIS

As explained earlier the study area was subdivided into 22 neighborhoods based entirely on data available in the 1970 census. These data and related maps form an inventory for each neighborhood and are presented in this section.

In addition to the inventory of pathologies, a list of selected general socio-economic data completes the statistical typology for each neighborhood.

Median family income was used in the inventory because it better represents the central value especially when there are extremes in income which would influence the mean unduly. This was listed under the heading of "Family and Unrelated Individuals" income in the census report.

The original list of pathologies included an entry entitled "High School Dropouts". This entry was eventually dropped from the inventory typology in favor of the heading "Median School Years Completed". The latter provided more concise information relative to educational levels than the former.

The entry "Families With Income Below Poverty Level", as listed on the inventory page, was defined by a Federal Interagency Committee in 1969 to be a non-farm family of four, earning $3,743 or less.

TABLE 3 NEIGHBORHOOD No. 1 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		471
DIV. YOUTH SERVICES		24
WELFARE		101
HEALTH		48
TUBERCULOSIS	11	
MENTAL HEALTH	21	
VENEREAL DISEASE	16	
CRIME		277
PARKS (Acres)		37.79
UNEMPLOYED		53
DRUG ABUSE		10
UNSOUND HOUSING UNITS		121

GENERAL SOCIO-ECONOMIC DATA

POPULATION	18,360
% BLACK	77.27
MEDIAN FAMILY INCOME	$4,338
RENTER OCCUPIED HOUSING (%)	57
LAND AREA (Acres)	1,961
PERSONS/ACRE	9.36
PARK ACRES/1000 PERSONS	2.06
YEAR ROUND HOUSING UNITS	6,524
PERSON/OCCUPIED HOUSING UNIT	3.17
MEDIAN SCHOOL YEARS COMPLETED	9.7
YEAR ROUND VACANT HOUSING	747
FAMILIES WITH INCOME BELOW POVERTY LEVEL	1,601

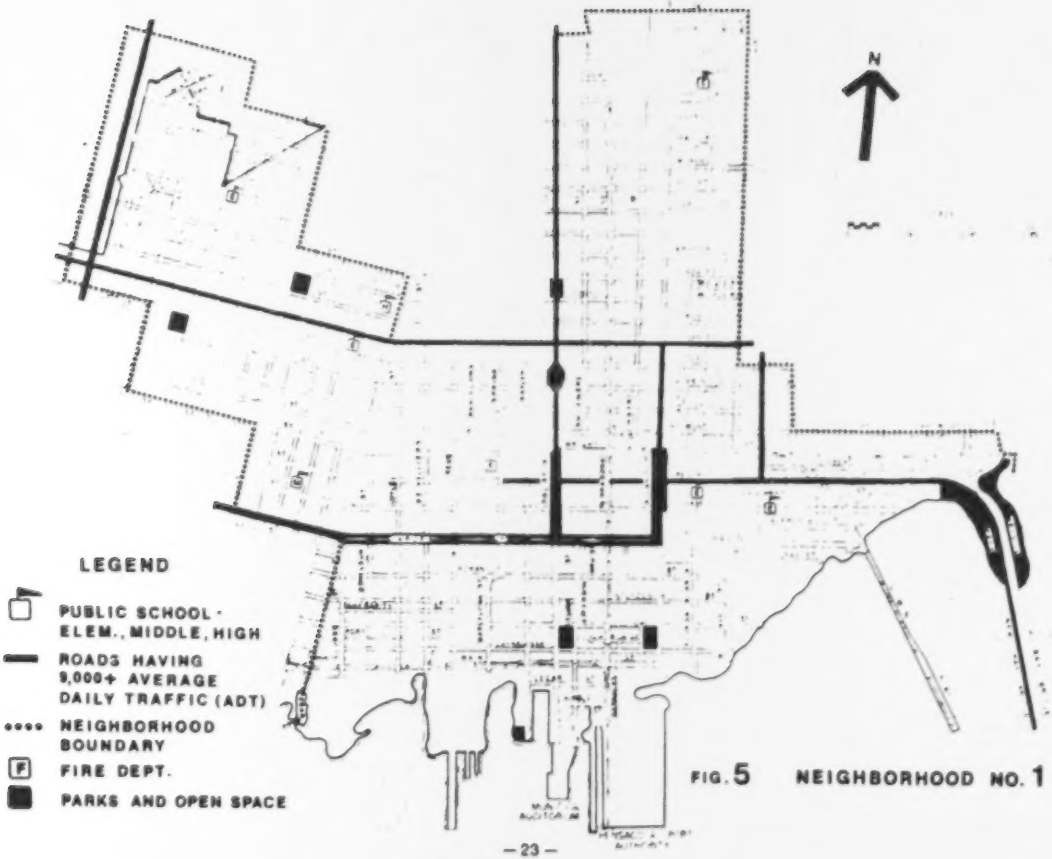


FIG. 5 NEIGHBORHOOD NO. 1

TABLE 4 NEIGHBORHOOD No. 2 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		23
DIV. YOUTH SERVICES		1
WELFARE		7
HEALTH		3
TUBERCULOSIS	1	
MENTAL HEALTH	0	
VENEREAL DISEASE	2	
CRIME		12
PARKS (Acre)		2.55
UNEMPLOYED		4
DRUG ABUSE		3
UNSOUND HOUSING UNITS		1

GENERAL SOCIO-ECONOMIC DATA

POPULATION	2,203
% BLACK	35.31
MEDIAN FAMILY INCOME/CENSUS TRACT	$10,349
RENTER OCCUPIED HOUSING (%)	59
LAND AREA (Acres)	305.7
PERSONS/ACRE	7.21
PARK ACRES/1000 PERSONS	1.16
YEAR ROUND HOUSING UNITS	941
PERSON/OCCUPIED HOUSING UNIT	2.78
MEDIAN SCHOOL YEARS COMPLETED	12.5
YEAR ROUND VACANT HOUSING	149
FAMILIES WITH INCOME BELOW POVERTY LEVEL	50

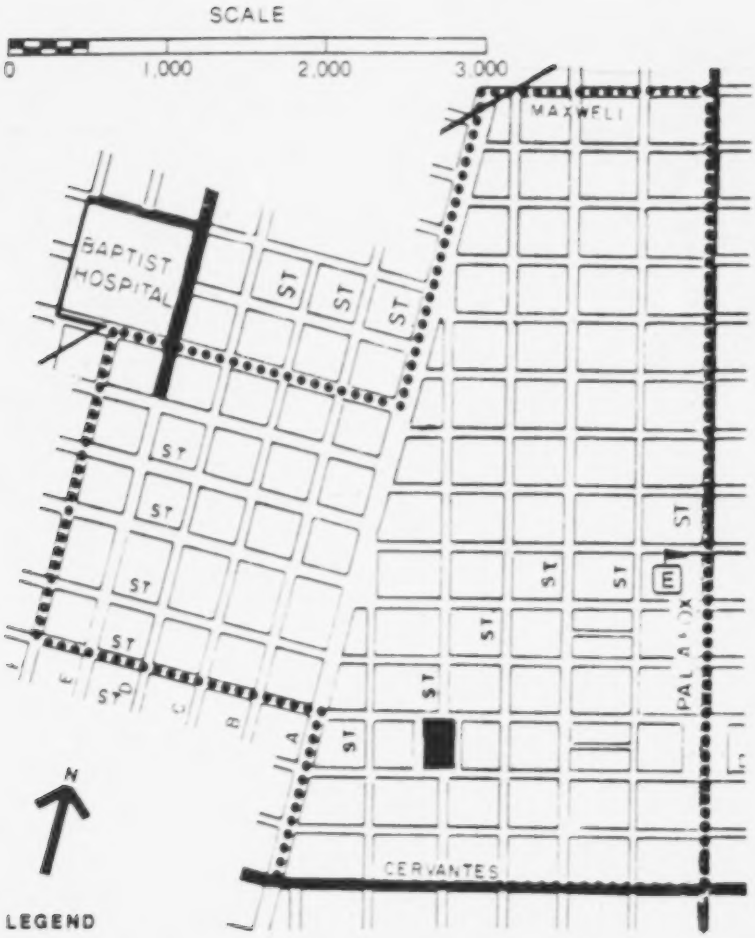


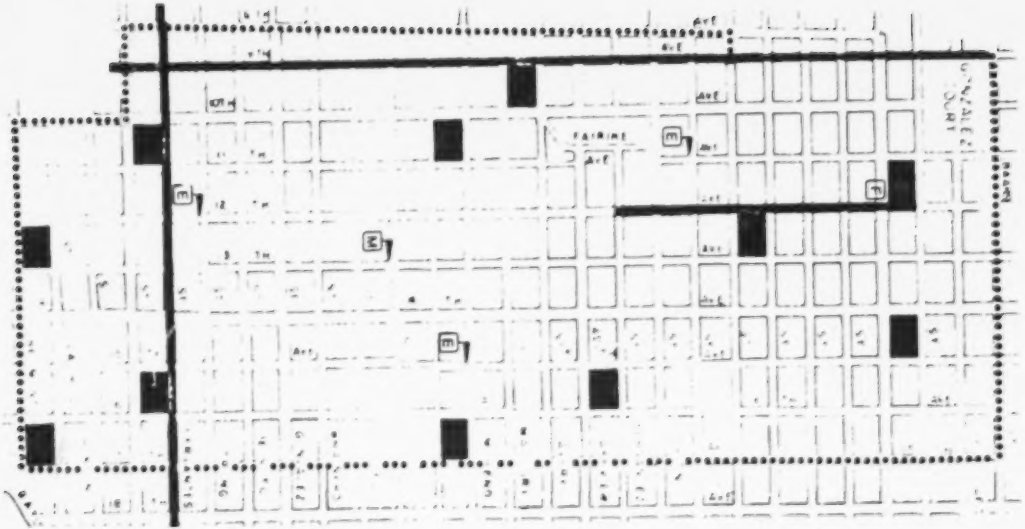
FIG. 6 NEIGHBORHOOD NO. 2

TABLE 5 NEIGHBORHOOD No. 3
INVENTORY

PATHOLOGY		FREQUENCY
FIRES		51
DIV. YOUTH SERVICES		0
WELFARE		10
HEALTH		7
TUBERCULOSIS	1	
MENTAL HEALTH	6	
VENEREAL DISEASE	0	
CRIME		33
PARKS (Acres)		27.78
UNEMPLOYED		5
DRUG ABUSE		5
UNSOUND HOUSING UNITS		4

GENERAL SOCIO-ECONOMIC DATA

POPULATION	5,601
% BLACK	23.12
MEDIAN INCOME/CENSUS TRACT	$7,389
RENTER OCCUPIED HOUSING (%)	33
LAND AREA (Acres)	839
PERSONS/ACRE	6.68
PARK ACRES/1000 PERSONS	4.96
YEAR ROUND HOUSING UNITS	2,411
PERSON/OCCUPIED HOUSING UNIT	2.54
MEDIAN SCHOOL YEARS COMPLETED	12.0
YEAR ROUND VACANT HOUSING	204
FAMILIES WITH INCOME BELOW POVERTY LEVEL	238



LEGEND

- PUBLIC SCHOOL - ELEM., MIDDLE, HIGH
- ROADS HAVING 9,000+ AVERAGE DAILY TRAFFIC (ADT)
- NEIGHBORHOOD BOUNDARY
- [F] FIRE DEPT.
- PARKS AND OPEN SPACE

FIG. 7

NEIGHBORHOOD NO. 3

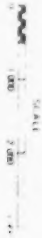
TABLE 6 NEIGHBORHOOD No. 4 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		15
DIV. YOUTH SERVICES		0
WELFARE		0
HEALTH		1
TUBERCULOSIS	0	
MENTAL HEALTH	1	
VENEREAL DISEASE	0	
CRIME		11
PARKS		39.0
UNEMPLOYED		4
DRUG ABUSE		2
UNSOUND HOUSING UNITS		0

GENERAL SOCIO-ECONOMIC DATA

POPULATION	3,372
% BLACK	3.91
MEDIAN INCOME/CENSUS TRACT	$11,256
RENTER OCCUPIED HOUSING (%)	19
LAND AREA (Acres)	590.7
PERSONS/ACRE	5.71
PARK ACRES/1000 PERSONS	11.57
YEAR ROUND HOUSING UNITS	1,377
PERSON/OCCUPIED HOUSING UNIT	2.59
MEDIAN SCHOOL YEARS COMPLETED	12.7
YEAR ROUND VACANT HOUSING	76
FAMILIES WITH INCOME BELOW POVERTY LEVEL	19







LEGEND

- PUBLIC SCHOOL - ELEM., MIDDLE, HIGH
- ROADS HAVING 9,000+ AVERAGE DAILY TRAFFIC (ADT)
- •••• NEIGHBORHOOD BOUNDARY
- F FIRE DEPT.
- PARKS AND OPEN SPACE

FIG. 8

NEIGHBORHOOD NO. 4

TABLE 7 NEIGHBORHOOD No. 5
INVENTORY

PATHOLOGY		FREQUENCY
FIRES		32
DIV. YOUTH SERVICES		1
WELFARE		2
HEALTH		4
TUBERCULOSIS	0	
MENTAL HEALTH	4	
VENEREAL DISEASE	0	
CRIME		21
PARKS (Acre)		25.16
UNEMPLOYED		4
DRUG ABUSE		12
UNSOUND HOUSING UNITS		0

GENERAL SOCIO-ECONOMIC DATA

POPULATION	7,029
% BLACK	0.01
MEDIAN FAMILY INCOME	$12,671
RENTER OCCUPIED HOUSING (%)	26
LAND AREA (Acres)	2,246.5
PERSONS/ACRE	3.13
PARK ACRES/1000 PERSONS	3.58
YEAR ROUND HOUSING UNITS	2,335
PERSON/OCCUPIED HOUSING UNIT	3.20
MEDIAN SCHOOL YEARS COMPLETED	12.9
YEAR ROUND VACANT HOUSING	135
FAMILIES WITH INCOME BELOW POVERTY LEVEL	83



FIG. 9 NEIGHBORHOOD NO. 5

TABLE 8 NEIGHBORHOOD No. 6 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		104
DIV. YOUTH SERVICES		2
WELFARE		5
HEALTH		6
TUBERCULOSIS	1	
MENTAL HEALTH	5	
VENEREAL DISEASE	0	
CRIME		30
PARKS (Acre)		9.7
UNEMPLOYED		5
DRUG ABUSE		3
UNSOUND HOUSING UNITS		8

GENERAL SOCIO-ECONOMIC DATA

POPULATION	4,659
% BLACK	12.51
MEDIAN FAMILY INCOME	$7,221
RENTER OCCUPIED HOUSING (%)	33
LAND AREA (Acres)	1,083.6
PERSONS/ACRE	4.30
PARK ACRES/1000 PERSONS	2.08
YEAR ROUND HOUSING UNITS	1,759
PERSON/OCCUPIED HOUSING UNIT	2.92
MEDIAN SCHOOL YEARS COMPLETED	10.5
YEAR ROUND VACANT HOUSING	165
FAMILIES WITH INCOME BELOW POVERTY LEVEL	204

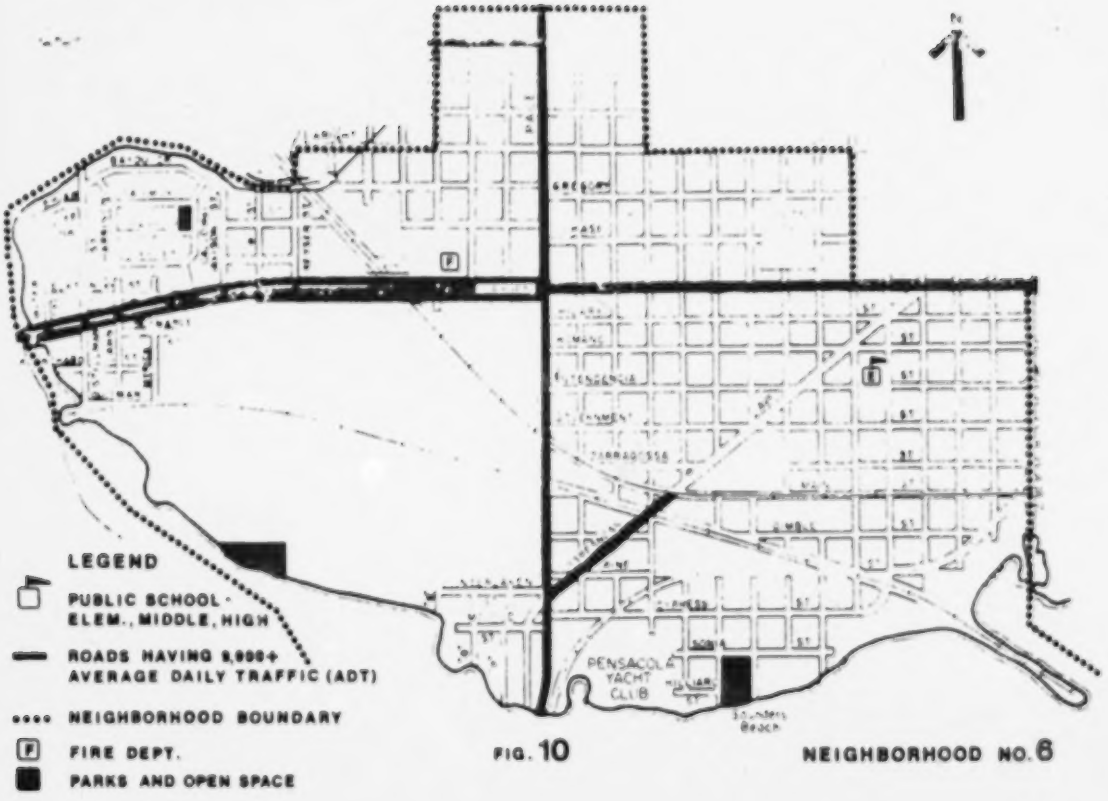


FIG. 10 NEIGHBORHOOD NO. 6

TABLE 9 NEIGHBORHOOD No. 7
INVENTORY

PATHOLOGY		FREQUENCY
FIRES		13
DIV. YOUTH SERVICES		0
WELFARE		7
HEALTH		8
TUBERCULOSIS	0	
MENTAL HEALTH	7	
VENEREAL DISEASE	1	
CRIME		4
PARKS (Acres)		0
UNEMPLOYED		8
DRUG ABUSE	[3]UNSOUND HOUSING UNITS	5

GENERAL SOCIO-ECONOMIC DATA

POPULATION	6,720
0 . 7% BLACK	
MEDIAN INCOME/CENSUS TRACT	$7,364
RENTER OCCUPIED HOUSING (%)	37
LAND AREA (Acres)	1,244.7
PERSONS/ACRES	5.40
PARK ACRES/1000 PERSONS	0--
YEAR ROUND HOUSING UNITS	2,544
PERSON/OCCUPIED HOUSING UNIT	2.91
MEDIAN SCHOOL YEARS COMPLETED	11.8
YEAR ROUND VACANT HOUSING	232
FAMILIES WITH INCOME BELOW POVERTY LEVEL	246

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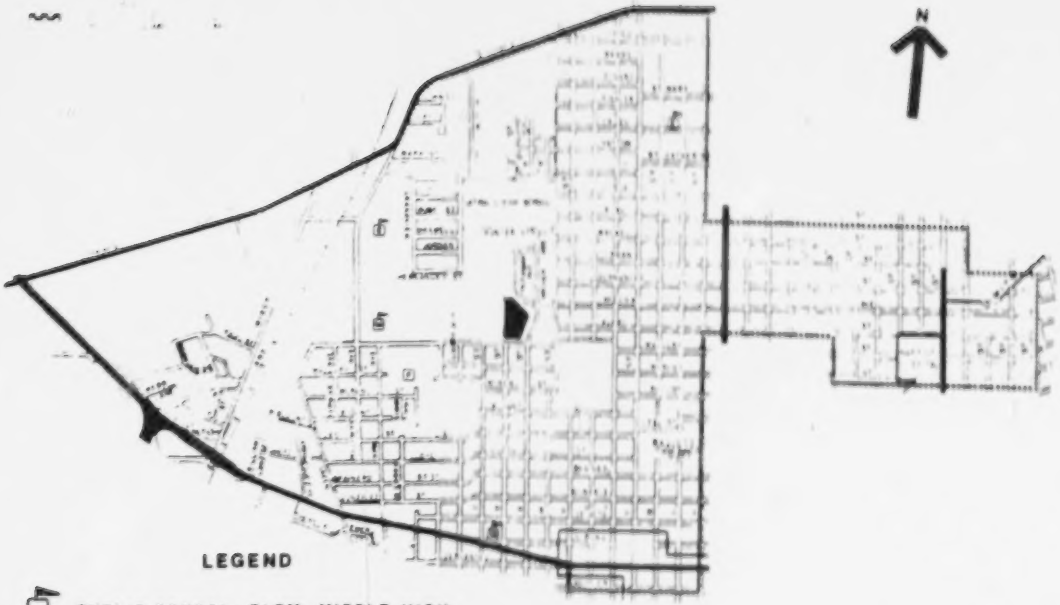


FIG. 12

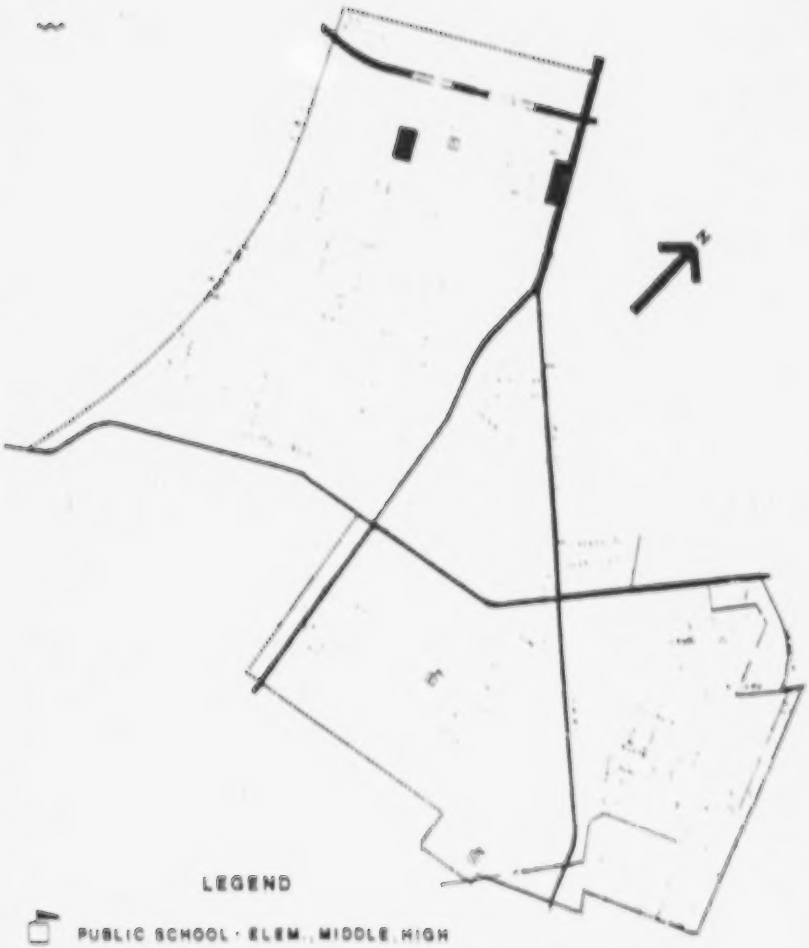
NEIGHBORHOOD NO. 8

TABLE 11 NEIGHBORHOOD No. 9 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		76
DIV. YOUTH SERVICES		10
WELFARE		61
HEALTH		18
TUBERCULOSIS	2	
MENTAL HEALTH	7	
VENEREAL DISEASE	9	
CRIME		22
PARKS (Acre)		11.12
UNEMPLOYED		27
DRUG ABUSE		3
UNSOUND HOUSING UNITS		100

GENERAL SOCIO-ECONOMIC DATA

POPULATION	11,719
% BLACK	68.64
MEDIAN FAMILY INCOME	$5,263
RENTER OCCUPIED HOUSING (%)	27
LAND AREA (Acres)	2,141.4
PERSONS/ACRE	5.47
PARK ACRES/1000 PERSONS	0.95
YEAR ROUND HOUSING UNITS	3,429
PERSON/OCCUPIED HOUSING UNIT	3.73
MEDIAN SCHOOL YEARS COMPLETED	9.0
YEAR ROUND VACANT HOUSING	284
FAMILIES WITH INCOME BELOW POVERTY LEVEL	871



LEGEND

PUBLIC SCHOOL - ELEM., MIDDLE, HIGH

ROADS HAVING 9,000+ AVERAGE DAILY TRAFFIC (ADT)

NEIGHBORHOOD BOUNDARY

F FIRE DEPT.

PARKS AND OPEN SPACE

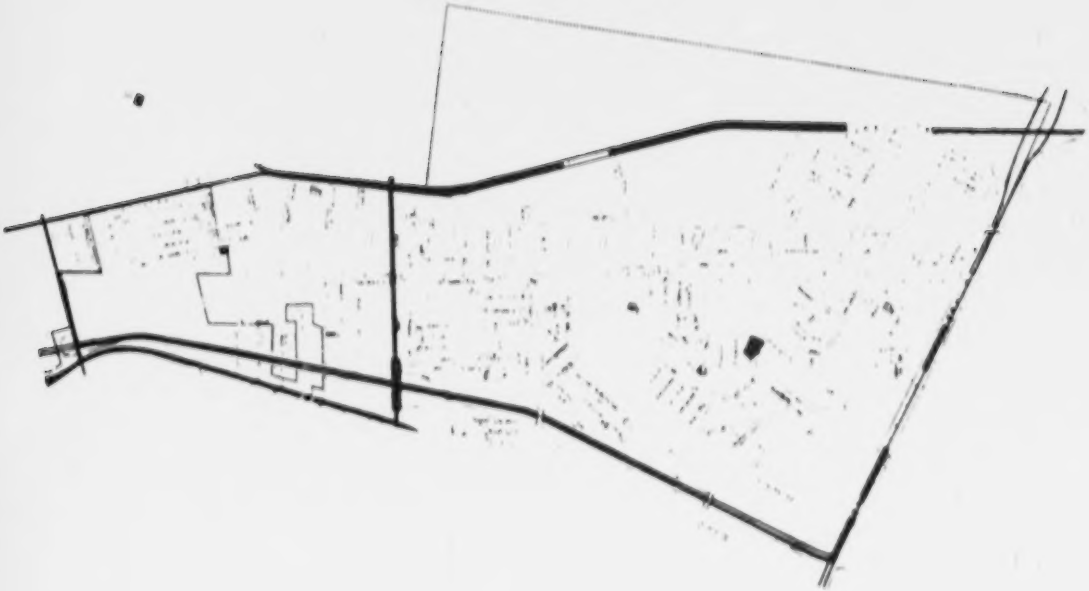
FIG. 13 NEIGHBORHOOD NO. 9

TABLE 12 NEIGHBORHOOD No. 10 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		32
DIV. YOUTH SERVICES		3
WELFARE		20
HEALTH		5
TUBERCULOSIS	1	
MENTAL HEALTH	3	
VENEREAL DISEASE	1	
CRIME		5
PARKS (Acre)		6.89
UNEMPLOYED		10
DRUG ABUSE		1
UNSOUND HOUSING UNITS		3

GENERAL SOCIO-ECONOMIC DATA

POPULATION	6,809
% BLACK	21.83
MEDIAN FAMILY INCOME	$7,929
RENTER OCCUPIED HOUSING (%)	26
LAND AREA (Acres)	3,875.0
PERSONS/ACRE	1.76
PARK ACRES/1000 PERSONS	1.01
YEAR ROUND HOUSING UNITS	2,080
PERSON/OCCUPIED HOUSING UNIT	3.54
MEDIAN SCHOOL YEARS COMPLETED	12.0
YEAR ROUND VACANT HOUSING	154
FAMILIES WITH INCOME BELOW POVERTY LEVEL	314



LEGEND

PUBLIC SCHOOL - ELEM., MIDDLE, HIGH

ROADS HAVING 9,000+ AVERAGE DAILY TRAFFIC (ADT)

NEIGHBORHOOD BOUNDARY

FIRE DEPT.

PARKS AND OPEN SPACE

FIG. 14

NEIGHBORHOOD NO. 10

TABLE 13 NEIGHBORHOOD No. 11 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		67
DIV. YOUTH SERVICES		6
WELFARE		14
HEALTH		8
TUBERCULOSIS	2	
MENTAL HEALTH	6	
VENEREAL DISEASE	0	
CRIME		31
PARKS (Acres)		25.37
UNEMPLOYED		21
DRUG ABUSE		5
UNSOUND HOUSING UNITS		5

GENERAL SOCIO-ECONOMIC DATA

POPULATION	8,661
% BLACK	6.98
MEDIAN INCOME/CENSUS TRACT	$9,640
RENTER OCCUPIED HOUSING (%)	25
LAND AREA (Acres)	3,578.5
PERSONS/ACRE	2.42
PARK ACRES/1000 PERSONS	2.93
YEAR ROUND HOUSING UNITS	3,893
PERSON/OCCUPIED HOUSING UNIT	2.32
MEDIAN SCHOOL YEARS COMPLETED	12.5
YEAR ROUND VACANT HOUSING	55
FAMILIES WITH INCOME BELOW POVERTY LEVEL	100



LEGEND

PUBLIC SCHOOL - ELEM., MIDDLE, HIGH

ROADS HAVING 9,000+ AVERAGE DAILY TRAFFIC (ADT)

NEIGHBORHOOD BOUNDARY

F FIRE DEPT.

PARKS AND OPEN SPACE

N

FIG. 15

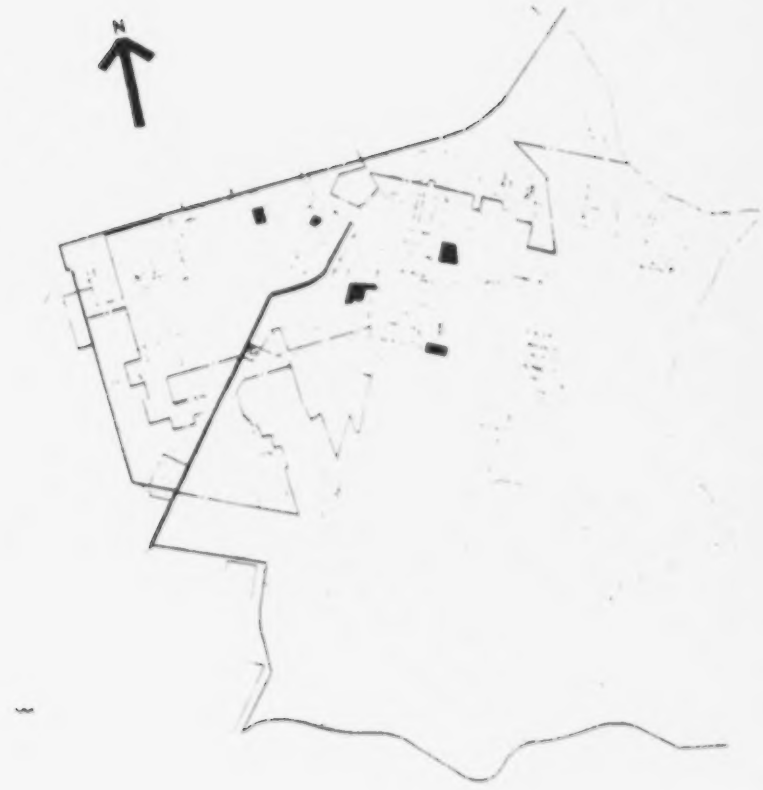
NEIGHBORHOOD NO. 11

TABLE 14 NEIGHBORHOOD No. 12 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		51
DIV. YOUTH SERVICES		5
WELFARE		1
HEALTH		9
TUBERCULOSIS	0	
MENTAL HEALTH	6	
VENEREAL DISEASE	3	
CRIME		13
PARKS (Acres)		24.86
UNEMPLOYED		6
DRUG ABUSE		7
UNSOUND HOUSING UNITS		1

GENERAL SOCIO-ECONOMIC DATA

POPULATION	8,302
% BLACK	0.02
MEDIAN FAMILY INCOME	$11,709
RENTER OCCUPIED HOUSING (%)	14
LAND AREA (Acres)	5,259.6
PERSONS/ACRE	1.58
PARK ACRES/1000 PERSONS	2.99
YEAR ROUND HOUSING UNITS	2,414
PERSON/OCCUPIED HOUSING UNIT	3.56
MEDIAN SCHOOL YEARS COMPLETED	12.8
YEAR ROUND VACANT HOUSING	81
FAMILIES WITH INCOME BELOW POVERTY LEVEL	66



LEGEND

PUBLIC SCHOOL - ELEM., MIDDLE, HIGH

ROADS HAVING 9,000+ AVERAGE DAILY TRAFFIC (ADT)

NEIGHBORHOOD BOUNDARY

F FIRE DEPT.

PARKS AND OPEN SPACE

FIG. 16 NEIGHBORHOOD NO. 12

TABLE 15 NEIGHBORHOOD No. 13
INVENTORY

PATHOLOGY		FREQUENCY
FIRES		40
DIV. YOUTH SERVICES		8
WELFARE		12
HEALTH		9
TUBERCULOSIS	2	
MENTAL HEALTH	7	
VENEREAL DISEASE	0	
CRIME		2
PARKS (Acres)		12.05
UNEMPLOYED		16
DRUG ABUSE		7
UNSOUND HOUSING UNITS		4

GENERAL SOCIO-ECONOMIC DATA

POPULATION	13,988
% BLACK	0.49
MEDIAN INCOME/CENSUS TRACT	$9,145
RENTER OCCUPIED HOUSING (%)	21
LAND AREA (Acres)	4,808.7
PERSONS/ACRE	2.91
PARK ACRES/1000 PERSONS	0.86
YEAR ROUND HOUSING UNITS	3,801
PERSON/OCCUPIED HOUSING UNIT	3.84
MEDIAN SCHOOL YEARS COMPLETED	12.25
YEAR ROUND VACANT HOUSING	158
FAMILIES WITH INCOME BELOW POVERTY LEVEL	228



FIG. 17 NEIGHBORHOOD NO. 13

TABLE 16 NEIGHBORHOOD No. 14 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		34
DIV. YOUTH SERVICES		4
WELFARE		4
HEALTH		11
TUBERCULOSIS	2	
MENTAL HEALTH	8	
VENEREAL DISEASE	1	
CRIME		1
PARKS (Acres)		14.65
UNEMPLOYED		11
DRUG ABUSE		2
UNSOUND HOUSING UNITS		

GENERAL SOCIO-ECONOMIC DATA

POPULATION	11,639
% BLACK	1.31
MEDIAN INCOME/CENSUS TRACT	$9,403
RENTER OCCUPIED HOUSING (%)	17
LAND AREA (Acres)	2,473.4
PERSONS/ACRES	4.71
PARK ACRES/1000 PERSONS	1.26
YEAR ROUND HOUSING UNITS	3,3[illegible]3
PERSON/OCCUPIED HOUSING UNIT	3.63
MEDIAN SCHOOL YEARS COMPLETED	12.35
YEAR ROUND VACANT HOUSING	150
FAMILIES WITH INCOME BELOW POVERTY LEVEL	226



LEGEND

PUBLIC SCHOOL - ELEM., MIDDLE, HIGH

ROADS HAVING 9,000+ AVERAGE DAILY TRAFFIC (ADT)

NEIGHBORHOOD BOUNDARY

F FIRE DEPT.

PARKS AND OPEN SPACE

FIG. 18

NEIGHBORHOOD NO. 14

TABLE 17 NEIGHBORHOOD No. 15
INVENTORY

PATHOLOGY		FREQUENCY
FIRES		12
DIV. YOUTH SERVICES		2
WELFARE		15
HEALTH		8
TUBERCULOSIS	0	
MENTAL HEALTH	3	
VENEREAL DISEASE	5	
CRIME		2
PARKS (Acres)		0
UNEMPLOYED		8
DRUG ABUSE		4
UNSOUND HOUSING UNITS		8

GENERAL SOCIO-ECONOMIC DATA

POPULATION	7,340
% BLACK	46.40
MEDIAN INCOME/CENSUS TRACT	$7,448
RENTER OCCUPIED HOUSING (%)	15
LAND AREA (Acres)	4,954.2
PERSONS/ACRES	1.48
PARK ACRES/1000 PERSONS	– – –
YEAR ROUND HOUSING UNITS	1,916
PERSON/OCCUPIED HOUSING UNIT	3.96
MEDIAN SCHOOL YEARS COMPLETED	11.9
YEAR ROUND VACANT HOUSING	63
FAMILIES WITH INCOME BELOW POVERTY LEVEL	283



FIG. 19 NEIGHBORHOOD NO. 15

TABLE 18 NEIGHBORHOOD No. 16
INVENTORY

PATHOLOGY		FREQUENCY
FIRES		54
DIV. YOUTH SERVICES		5
WELFARE		20
HEALTH		19
TUBERCULOSIS	1	
MENTAL HEALTH	14	
VENEREAL DISEASE	4	
CRIME		16
PARKS (Acres)		55.67
UNEMPLOYED		14
DRUG ABUSE		7
UNSOUND HOUSING UNITS		8

GENERAL SOCIO-ECONOMIC DATA

POPULATION	19,053
% BLACK	7.88
MEDIAN INCOME/CENSUS TRACT	$7,842
RENTER OCCUPIED HOUSING (%)	40
LAND AREA (Acres)	9,562.0
PERSONS/ACRES	2.00
PARK ACRES/1000 PERSONS	2.92
YEAR ROUND HOUSING UNITS	6,441
PERSON/OCCUPIED HOUSING UNIT	3.25
MEDIAN SCHOOL YEARS COMPLETED	12.35
YEAR ROUND VACANT HOUSING	562
FAMILIES WITH INCOME BELOW POVERTY LEVEL	683



LEGEND

- PUBLIC SCHOOL - ELEM., MIDDLE, HIGH
- ROADS HAVING 5,000+ AVERAGE DAILY TRAFFIC (ADT)
- •••• NEIGHBORHOOD BOUNDARY
- F FIRE DEPT.
- PARKS AND OPEN SPACE

FIG. 20

NEIGHBORHOOD NO. 16

TABLE 19 NEIGHBORHOOD No. 17 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		54
DIV. YOUTH SERVICES		6
WELFARE		3
HEALTH		4
TUBERCULOSIS	1	
MENTAL HEALTH	1	
VENEREAL DISEASE	2	
CRIME		1
PARKS (Acres)		11.32
UNEMPLOYED		6
DRUG ABUSE		3
UNSOUND HOUSING UNITS		1

GENERAL SOCIO-ECONOMIC DATA

POPULATION	7,841
% BLACK	0.38
MEDIAN INCOME/CENSUS TRACT	$8,549
RENTER OCCUPIED HOUSING (%)	
LAND AREA (Acres)	12,524.5
PERSONS/ACRES	0.63
PARK ACRES/1000 PERSONS	1.44
YEAR ROUND HOUSING UNITS	2,374
PERSON/OCCUPIED HOUSING UNIT	3.47
MEDIAN SCHOOL YEARS COMPLETED	11.7
YEAR ROUND VACANT HOUSING	112
FAMILIES WITH INCOME BELOW POVERTY LEVEL	213



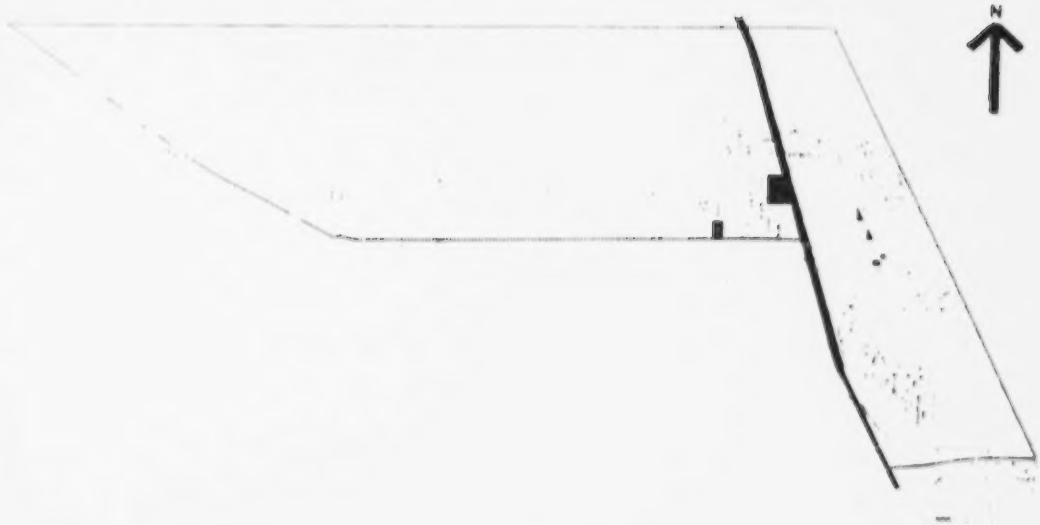
FIG. 21 NEIGHBORHOOD NO. 17

TABLE 20 NEIGHBORHOOD No. 18 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		12
DIV. YOUTH SERVICES		0
WELFARE		5
HEALTH		1
TUBERCULOSIS	0	
MENTAL HEALTH	1	
VENEREAL DISEASE	0	
CRIME		17
PARKS (Acres)		13.41
UNEMPLOYED		7
DRUG ABUSE		1
UNSOUND HOUSING UNITS		0

GENERAL SOCIO-ECONOMIC DATA

POPULATION	4,489
% BLACK	12.34
MEDIAN INCOME/CENSUS TRACT	$8,163
RENTER OCCUPIED HOUSING (%)	29
LAND AREA (Acres)	2,578.6
PERSONS/ACRES	1.74
PARK ACRES/1000 PERSONS	2.99
YEAR ROUND HOUSING UNITS	1,393
PERSON/OCCUPIED HOUSING UNIT	3.38
MEDIAN SCHOOL YEARS COMPLETED	11.6
YEAR ROUND VACANT HOUSING	66
FAMILIES WITH INCOME BELOW POVERTY LEVEL	136



LEGEND

PUBLIC SCHOOL - ELEM., MIDDLE, HIGH

ROADS HAVING 8,000+ AVERAGE DAILY TRAFFIC (ADT)

NEIGHBORHOOD BOUNDARY

F FIRE DEPT.

PARKS AND OPEN SPACE

FIG. 22

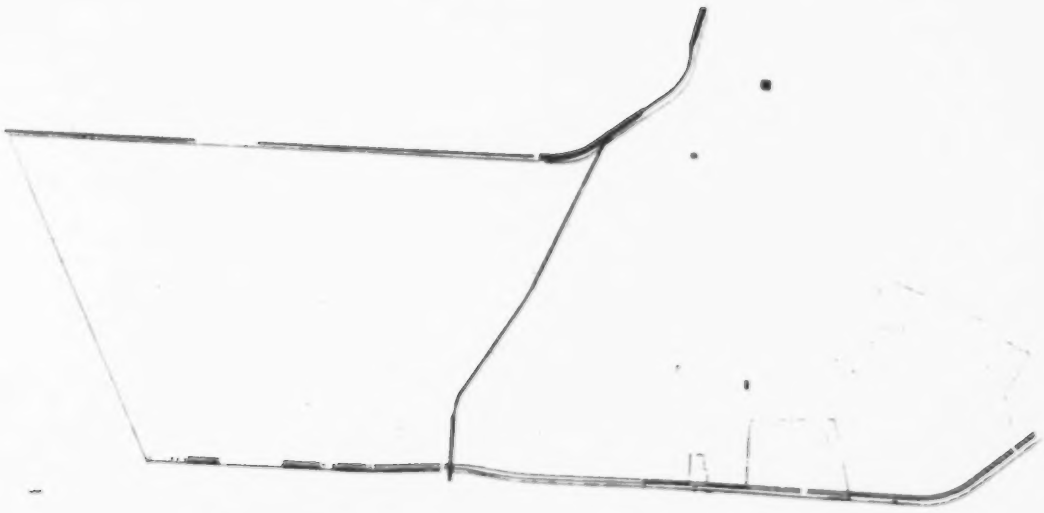
NEIGHBORHOOD NO. 18

TABLE 21 NEIGHBORHOOD No. 19 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		34
DIV. YOUTH SERVICES		3
WELFARE		3
HEALTH		5
TUBERCULOSIS	0	
MENTAL HEALTH	2	
VENEREAL DISEASE	3	
CRIME		4
PARKS (Acres)		9.96
UNEMPLOYED		18
DRUG ABUSE		6
UNSOUND HOUSING UNITS		0

GENERAL SOCIO-ECONOMIC DATA

POPULATION	10,121
% BLACK	11.17
MEDIAN INCOME/CENSUS TRACT	$7,924
RENTER OCCUPIED HOUSING (%)	19
LAND AREA (Acres)	6,892.2
PERSONS/ACRES	1.47
PARK ACRES/1000 PERSONS	0.98
YEAR ROUND HOUSING UNITS	2,578
PERSON/OCCUPIED HOUSING UNIT	4.08
MEDIAN SCHOOL YEARS COMPLETED	12.1
YEAR ROUND VACANT HOUSING	98
FAMILIES WITH INCOME BELOW POVERTY LEVEL	256



LEGEND

PUBLIC SCHOOL - ELEM., MIDDLE, HIGH

ROADS HAVING 8,000+ AVERAGE DAILY TRAFFIC (ADT)

NEIGHBORHOOD BOUNDARY

F FIRE DEPT.

PARKS AND OPEN SPACE

N

FIG. 23

NEIGHBORHOOD NO. 19

TABLE 22 NEIGHBORHOOD No. 20
INVENTORY

PATHOLOGY		FREQUENCY
FIRES		13
DIV. YOUTH SERVICES		0
WELFARE		0
HEALTH		2
TUBERCULOSIS	0	
MENTAL HEALTH	2	
VENEREAL DISEASE	0	
CRIME		10
PARKS (Acres)		192.69
UNEMPLOYED		5
DRUG ABUSE		6
UNSOUND HOUSING UNITS		0

GENERAL SOCIO-ECONOMIC DATA

POPULATION	4,190
% BLACK	0.04
MEDIAN INCOME/CENSUS TRACT	$12,945
RENTER OCCUPIED HOUSING (%)	23
LAND AREA (Acres)	3,161.5
PERSONS/ACRES	1.33
PARK ACRES/1000 PERSONS	45.99
YEAR ROUND HOUSING UNITS	1,336
PERSON/OCCUPIED HOUSING UNIT	3.52
MEDIAN SCHOOL YEARS COMPLETED	13.1
YEAR ROUND VACANT HOUSING	144
FAMILIES WITH INCOME BELOW POVERTY LEVEL	61

LEGEND

- PUBLIC SCHOOL - ELEM., MIDDLE, HIGH
- ROADS HAVING 9,000+ AVERAGE DAILY TRAFFIC (ADT)
- FIRE DEPT.
- PARKS AND OPEN SPACE

FIG. 24

GULF BREEZE

NEIGHBORHOOD NO. 20

TABLE 23 NEIGHBORHOOD No. 21 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		65
DIV. YOUTH SERVICES		0
WELFARE		43
HEALTH		43
TUBERCULOSIS	6	
MENTAL HEALTH	5	
VENEREAL DISEASE	32	
CRIME		9
PARKS (Acres)		19.8
UNEMPLOYED		7
DRUG ABUSE		1
UNSOUND HOUSING UNITS		194

GENERAL SOCIO-ECONOMIC DATA

POPULATION	6,588
% BLACK	13.58
MEDIAN INCOME/CENSUS TRACT	$7,524
RENTER OCCUPIED HOUSING (%)	30
LAND AREA (Acres)	3,520.4
PERSONS/ACRE	1.87
PARK ACRES/1000 PERSONS	3.01
YEAR ROUND HOUSING UNITS	2,276
PERSON/OCCUPIED HOUSING UNIT	3.25
MEDIAN SCHOOL YEARS COMPLETED	12.3
YEAR ROUND VACANT HOUSING	249
FAMILIES WITH INCOME BELOW POVERTY LEVEL	318



MILTON, FLORIDA

LEGEND

PUBLIC SCHOOL - ELEM., MIDDLE, HIGH

ROADS HAVING 9,000+ AVERAGE DAILY TRAFFIC (ADT)

F FIRE DEPT.

PARKS AND OPEN SPACE

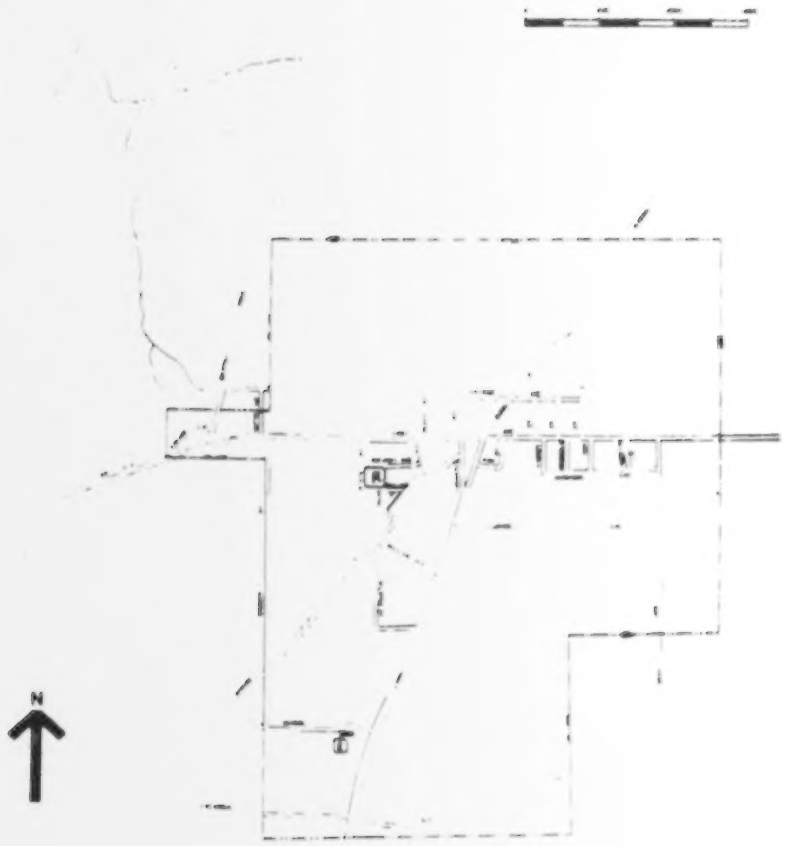
FIG. 25 NEIGHBORHOOD NO. 21

TABLE 24 NEIGHBORHOOD No. 22 INVENTORY

PATHOLOGY		FREQUENCY
FIRES		5
DIV. YOUTH SERVICES		0
WELFARE		17
HEALTH		1
TUBERCULOSIS	0	
MENTAL HEALTH	1	
VENEREAL DISEASE	0	
CRIME		0
PARKS (Acres)		2.50
UNEMPLOYED		0
DRUG ABUSE		0
UNSOUND HOUSING UNITS		9

GENERAL SOCIO-ECONOMIC DATA

POPULATION	672
% BLACK	0.85
MEDIAN INCOME/CENSUS TRACT	$6,813
RENTER OCCUPIED HOUSING (%)	19
LAND AREA (Acres)	1,026.6
PERSONS/ACRES	0.65
PARK ACRES/1000 PERSONS	3.72
YEAR ROUND HOUSING UNITS	1,183
PERSON/OCCUPIED HOUSING UNIT	3.94
MEDIAN SCHOOL YEARS COMPLETED	10.6
YEAR ROUND VACANT HOUSING	119
FAMILIES WITH INCOME BELOW POVERTY LEVEL	194



LEGEND

PUBLIC SCHOOL - ELEM., MIDDLE, HIGH

ROADS HAVING 8,000+ AVERAGE DAILY TRAFFIC (ADT)

F FIRE DEPT.

PARKS AND OPEN SPACE

JAY, FLORIDA

F.G. 26 NEIGHBORHOOD NO. 22

Delineation of neighborhoods and related data are listed on pages 22 through 65.

Table 3 pages 67 and 68 represents a summary of all neighborhood statistical relationships in the form of a Social Pathology Index (SPI). The application of this index reduces large amounts of data on social problems, economic dependence, and various other socio-economic factors into *one* numerical value of social-disorganization. This index allows a comprehensive and composite description of the socio-economic characteristics of blighted and non-blighted neighborhoods.

The SPI is an analitical tool and was derived from concepts developed by the City of Providence, Rhode Island, in their Neighborhood Analysis. The City of San Jose, California, also employed the SPI Technique together with computer technology to formulate their neighborhood analysis.

In describing the Social Pathology Index the San Jose Neighborhood Analysis states:

> "The Index is very general in nature. It shows that one area of the city has more problems than another, further, the Index only ranks neighborhoods; it does not show that the higher score is unacceptable by community standards and it does not show how much variation there is between neighborhoods-the standard used here is relative rather than absolute. Regardless of how a neighborhood compares with other cities, it gets a high score when it has more problems than other neighbohoods . . ."

Judgements concerning the relative importance of the variables or their weights were not made. All of the variables listed constitute problematic situations which are

TABLE 25 INDICATORS OF SOCIAL PATHOLOGY

NEIGHBORHOOD NUMBER	DRUGS	VENEREAL DISEASE	TUBERCULOSIS	FIRE	DIVISION OF YOUTH SERVICES
1	9	9	10	10	10
2	6	5	2	6	3
3	7	1	3	7	1
4	3	1	4	4	1
5	10	1	1	6	2
6	5	1	4	9	4
7	5	2	1	4	1
8	4	2	5	9	9
9	4	9	8	9	9
10	2	2	5	6	5
11	7	1	8	8	8
12	9	5	1	7	6
13	9	1	7	7	8
14	3	3	7	5	5
15	6	8	1	3	3
16	8	7	6	8	7
17	3	4	6	2	7
18	2	1	1	3	1
19	8	6	1	5	4
20	8	1	1	4	1
21	2	10	9	8	1
22	1	1	1	3	1

TABLE 25 – (continued)

NEIGHBORHOOD NUMBER	MENTAL HEALTH	WELFARE	CRIME	HOUSING	UNEMPLOYMENT	SOCIAL PATHOLOGY INDEX
1	10	10	10	9	10	9.70
2	1	5	6	3	2	3.90
3	7	6	9	5	4	5.00
4	3	1	6	1	3	2.70
5	5	3	8	1	4	4.10
6	7	4	9	6	6	5.50
7	8	5	4	6	7	4.30
8	7	8	6	8	9	6.70
9	8	9	8	9	7	8.00
10	5	9	4	4	9	5.10
11	8	7	9	6	4	6.60
12	8	2	6	3	8	5.50
13	9	6	3	5	8	6.30
14	9	4	3	4	6	4.90
15	4	7	3	7	8	5.00
16	9	8	7	7	5	7.20
17	3	3	7	2	5	4.20
18	3	4	8	1	9	3.30
19	4	3	4	1	9	4.50
20	4	1	5	1	3	2.90
21	6	9	5	8	5	6.30
22	2	8	1	10	1	2.90

of interest to local government. Obviously, all of the variables are interrelated to some degree, which will be described in chapter four.

Construction of the Social Pathology Index Involved:

1. Divide the Study Area into sub-units for comparison. Census tract boundaries were used to form twenty-two neighborhoods, each of which are composed of one or more census tracts.

2. Select variables and collect data. Data used depended upon the data availability. The most important ingredients of the Index included relevant variables and accurate data.

3. Convert the raw data into rates. In order to make comparisons between neighborhoods of different sizes, data was reduced to rates per 1000 families.

4. Rank the neighborhoods. Taking one variable at a time, the ranked neighborhoods were scored on a scale from one to ten, with ten being the highest or worst score. A score of one is reserved for a value of zero. Neighborhoods that had values above zero were divided as equally as possible and assigned scores from two to ten. This process is analogous to calculating a median rather than mean to describe the data.

5. Having converted the raw data into pure members, we average the individual scores of all variables to form the index for each neighborhood. The result is a single value for each neighborhood, which is the Social Pathology Index Value.

As previously stated the SPI shows one area has relatively more problems than other areas. Close examination will show index scores ranging from a low of 2.90, for

the town of Jay, to a high 9.70 in the downtown Pensacola core area.

The range of scores reveals that the majority of the neighborhoods have an index value less than 6.00, but seven neighborhoods with a mean of 7.28 scored above 6.00 value. It was decided that 6.00 represented a logical break-point, in terms of which neighborhoods should or should not be considered as treatment areas.

Those neighborhoods above the 6.00 SPI value were 1, 8, 9, 11, 13, 16, and 21. These are shown in figure 27 page 71, except neighborhoods 16 and 21. Neighborhood number 16, which covers the Warrington area, is shown as figure 20 page 53. Neighborhood number 21, the City of Milton, is shown on figure 25 page 63. These seven neighborhoods constitute areas of critical social disorganization, by exceeding the 6.00 Social Pathology Index value and are the neighborhoods which will receive detailed treatment in this report.

Those neighborhoods below the 6.00 SPI number are relatively free of significant social disorganization, although some high values existed in isolated cases. One of the most salient examples involved the "Drug Abuse" category, in that neighborhood number five had the highest drug abuse SPI value in the entire study area, while the other categories within the same neighborhood scored relatively lower values.

NEIGHBORHOOD ONE

Neighborhood One, the inner-city core area, scored either nine or ten in all pathology categories. This neighborhood is shown as figure 27 page 71, and covers the oldest sections of Pensacola. Over 73 percent of the existing housing units in this neighborhood were constructed by 1939.

FIG. 27 AREAS OF CRITICAL SOCIAL DISORGANIZATION



NEIGHBORHOOD BOUNDARIES •••••

CENSUS TRACT BOUNDARIES ——

NEIGHBORHOOD NUMBERS (17) NEIGHBORHOOD NO. 11

The Regional Planning Council survey (10 percent sample) identified 121 unsound housing units in this neighborhood. This survey was conducted, using a computer print-out, by property parcels as listed on the 1971 tax rolls. Assuming all property surveyed in this area had a residential structure upon it, we can infer an approximation of 1,210 units qualifying as blighted housing. This represents over 18 percent of the 6,524 existing residential units. These homes have wiring and plumbing problems by virture of age alone and maintenance would be a difficult job at best. Inadequate wiring was cited by the Pensacola Fire Department as the major structural problem causing fires within this neighborhood. A total of 471 fires occurred during the July 1971-June 1972 period, which was the highest number in the entire study area. Table 26 (pp. 73-4) identifies neighborhood number one having the highest rates in five other categories as well. These include unemployment, crime, Division of Youth Services (D.Y.S.), housing, and health. In addition the median family income is the lowest of all neighborhoods, $4,338 per year. Over fifty-seven percent of the residences are renter-occupied, which can be partially explained by the fact that the low income population generally is unable to own homes.

The high crime rate is characteristic of a downtown core area even though it is here that police protection is concentrated. Unemployment is generally a measure of economic dependence upon ones primary group (their relatives), or upon the State in the form of welfare. This neighborhood's raw scores were highest in both the unemployment and welfare categories, also the median education level for the neighborhood is 9.7 years. Based upon the SPI value, drug abuse is a major factor of social disorganization in neighborhood one. This is increasingly

TABLE 26 RATES PER 1000 FAMILIES

NEIGHBORHOOD NUMBER	1	2	3	4	5	6	7	8	9	10	11
POPULATION	18,360	2,203	5,601	3,372	7,029	4,659	6,720	11,328	11,719	6,809	8,661
PERSONS/H.U.	3.17	2.78	2.54	2.59	3.20	2.92	2.91	2.97	3.73	3.54	2.32
NO. FAMILIES	5,792	793	2,206	1,302	2,197	1,596	2,310	3,815	3,142	1,924	3,734
FIRES	81.32	29.00	23.12	11.52	14.57	65.16	5.63	19.13	24.19	16.63	17.94
D. Y. S.	4.14	1.26	–	–	0.46	1.25	–	2.36	3.18	1.56	1.61
HEALTH	8.29	3.78	3.17	1.54	1.82	3.76	3.46	1.83	5.73	2.60	2.14
CRIME	47.82	15.13	14.96	8.45	9.56	18.80	1.73	3.67	7.00	2.60	8.30
PARKS (ACRES)	6.52	3.22	12.59	29.95	11.45	6.08	–	1.33	3.54	3.58	6.79
HOUSING	20.89	1.26	1.81	–	–	5.01	2.16	4.72	31.83	1.56	1.34
UNEMPLOYED	9.15	5.04	2.27	3.07	1.82	3.13	3.46	3.15	8.59	5.20	5.62
DRUG ABUSE	1.73	3.78	2.27	1.54	5.46	1.88	1.30	0.79	0.95	0.52	1.34
WELFARE	17.44	8.83	4.53	–	0.91	3.13	3.03	6.55	19.41	10.40	3.75

TABLE 26 (continued)

NEIGHBORHOOD NUMBER	12	13	14	15	16	17	18	19	20	21	22
POPULATION	8,302	13,988	11,639	7,340	19,083	7,841	4,489	10,121	4,190	6,588	672
PERSONS/H.U.	3.56	3.84	3.63	3.96	3.25	3.47	3.38	4.08	3.52	3.25	3.94
NO. FAMILIES	2,332	3,643	3,207	1,854	5,872	2,260	1,329	2,481	1,191	2,027	171
FIRES	21.87	10.98	10.60	6.47	9.20	1.77	9.03	13.70	10.92	32.07	29.29
D. Y. S.	2.14	1.65	1.25	1.08	0.85	2.65	–	1.21	–	–	–
HEALTH	3.86	2.47	3.21	4.31	3.24	1.77	0.75	2.02	1.68	21.21	5.85
CRIME	5.57	0.55	0.31	1.08	2.72	0.44	12.79	1.61	4.03	4.44	–
PARKS (ACRES)	10.66	3.31	4.57	–	9.48	5.01	10.09	4.01	161.79	9.77	14.62
HOUSING	0.43	1.10	0.94	4.32	1.36	0.44	–	–	–	9.57	52.63
UNEMPLOYED	2.57	4.39	3.43	4.32	2.38	2.65	5.27	7.26	4.20	3.45	–
DRUG ABUSE	3.00	1.92	0.62	2.16	1.19	1.33	0.75	2.42	5.04	0.49	–
WELFARE	0.43	3.29	1.25	8.09	3.41	1.33	3.76	1.21	–	21.21	99.42

the trend in areas where high rates of unemployment, crime, and delinquency reach the levels as evident in neighborhood one. A total of 37.79 acres of public parkland are present here, which represents a rate of 6.52 acres per 1000 families. This is probably inadequate as this area has the highest population density per acre as shown in table 1 (pp.7-8).

NEIGHBORHOOD EIGHT

Neighborhood Eight consists of a major portion of the Brownsville area and has a SPI value of 6.70. Unlike neighborhood one, this area is located almost entirely in Escambia County. Our field survey identified eighteen blighted structures, which represents only 4.35 percent of the housing inventory. This can be partially explained by the fact that 80 percent of all existing homes were constructed since 1939, construction materials used, and the fact that the survey was an external condition survey only. This neighborhood is served by a volunteer fire department. This department recorded a total of 73 structural fires, the majority of which were kitchen oriented. The median education level is less than that of a high school graduate at 10.0 years. Neighborhood eight had high unemployment SPI values. The DYS value is indicative of problems generally associated with neighborhoods undergoing general social and family disintegration. Table 26 (pp.73-4) shows this neighborhood has the lowest rate in the health category. The data for this category comes from public health agencies only, and is not all inclusive. Those who can afford treatment from a private physician generally do. With the exception of TB these cases are not made a part of public records.

NEIGHBORHOOD NINE

Neighborhood Nine is centrally located in the Pensacola metropolitan area and is more oriented toward commercial and industrial land uses. This neighborhood had the second highest overall SPI value of 8.00. A low median education level of 9.0 years accompanies the high welfare, unemployment and crime rates for this neighborhood. Approximately one home of every three was identified as blighted, the highest rate for *all* neighborhoods. This is very significant in view of the fact that 84% of all homes existing were constructed since 1939. Incompatibility of land uses are always present in indescriminant industrial/residential development. On Fairfield Drive an elementary and high school were constructed across the highway from an existing sulfuric acid plant. Some years later a residential subdivision was constructed in this area and shortly thereafter signs of serious unsound structural conditions became obvious. This condition continues to deteriorate year by year.

The eastern portion of neighborhood nine has become increasing less desirable to live in because it was bisected by the Interstate 110 spur. The I-110 spur formed a twenty foot high "Chinese Wall" that isolated neighboring and neighbors who once lived across the street from each other. Land use transition, i.e. from residential to commercial or industrial, produces a heterogenious land use relationship which usually leads to physical and social neighborhood deterioration.

NEIGHBORHOOD ELEVEN

Neighborhood Eleven is located north of the downtown area, approximately 50% of the land area is in Escambia

County. The land use is predominantly single family residential, however, much new construction of high density apartments has taken place since the 1970 census. Pensacola Junior College, Sacred Heart Hospital, and the Cordova Mall Shopping Center are located in this neighborhood. All three generate a major traffic impact on the internal and surrounding road network. A second mail is under construction, in the north end of this neighborhood. This will further stratify existing land use relationships. This neighborhood contains over 25 acres of parks which is considerably higher than the mean of 14.48 acres for all the neighborhoods. This neighborhood had a SPI value of 6.60, which is above the overall SPI value mean of 5.21. In contrast, this value is below the mean of 7.28 for the seven neighborhoods identified as areas of critical social disorganization. The high median education (12.5) and income levels ($9,640) explain the low magnitudes in the welfare, health, and unemployment categories. Table 26 (pp.73-4) shows the crime rate to be very high, and was explained by the Pensacola Police Department that the majority of offenses and disturbances actually occurred at a public housing project located in the extreme south end of this neighborhood. In neighborhood number 11 the southern portion is the general area where the majority of the poverty level and welfare recipients live.

NEIGHBORHOOD THIRTEEN

Neighborhood Thirteen is comprised of an unincorporated area locally referred to as Myrtle Grove, located west of the City of Pensacola. It is characterized by predominant single family residential and undeveloped open space land uses. Much open space is being developed

for residential uses, which will reinforce the existing neighborhood character. Land located along the southern and western edges of the neighborhood boundary line, in all probability will remain relatively undeveloped due to the extremely high water table and related drainage problems. A SPI of 6.30 is the lowest value for these seven critical neighborhoods. Again the median educational level of 12.25 partially explains the relatively low welfare and unemployment rates. The blighted housing rate (1.10) is the lowest among the seven critical neighborhoods as shown on table 26 (pp. 73-4). The 1970 census reported that 83.5% of existing housing inventory was constructed since 1950, this fact explains the low housing rate in this neighborhood.

Drug abuse, DYS, and mental health are major problems in this neighborhood as substantiated by the Social Pathology Index values. This can be correlated with age, in this neighborhood over 40 percent of the population is between 15 and 34 years old. Considering the population of this age group the number of park acres (12.05) is definitely inadequate. Organized activity was not offered by the county parks during the study period. However, Escambia County has since created and funded a parks and recreation department. This neighborhood should be considered a "grey area" because social trends are developing characteristic of neighborhoods with higher SPI scores.

NEIGHBORHOOD SIXTEEN Neighborhood Sixteen, figure 20 (p. 53) is generally comprised of the Warrington-Gulf Beach Highway area in the southwest extremity of the study area. Land uses are single family residential, undeveloped open space, and small areas of commercial

uses. The Pensacola Country Club is located in the eastern section of this neighborhood, which is surrounded by examples of the best and worst housing in the SMSA. Large expanses of swampland with poor perculation make drainage and development in the western portion very costly. The area around Jackson and Bayou Marcus Creeks is low swampland and should remain in undeveloped open space land uses. This neighborhood has a total of 55.67 acres of dedicated park land, or 9.48 acres per 1000 families. This was both the highest rate and highest total park acreage for the six critical neighborhoods in Pensacola and Escambia County. A value of 7.20 was recorded on the SPI table as shown on pages 67 and 68. This table reveals that relative values in neighborhood 16 are moderately high in all categories except unemployment and TB. Mental health, drugs, and welfare measurements are representing the moderately high rank values contributing to the SPI. Again these scores are indicative of a trend toward an increasing rate of physical neighborhood deterioration.

The high welfare value is reinforced by the high number of families with an income below the poverty level. The 683 families, below this level, have a mean annual income of $2,057. This population is situated in the Patton Drive Moreno Court-Aero Vista area which contains the welfare, drug abuse, and mental health concentrations. The Escambia County Sheriff's Narcotics Division identified the Warrington area as the most drug-saturated area of Escambia County, especially in the heroin user class. The degree of drug abuse concentration, by neighborhood, was indeterminant in the Regional Planning Council survey. These area concentrations were provided by local narcotics agents. The sample failure is due

to data reporting techniques, i.e. a person is arrested for breaking and entering, the primary reason for committing this crime was to support his drug habit.

Neighborhood sixteen's year round housing unit inventory consist of 6,441 units. The external evaluation survey identified 88 (1.36 percent) units we could classify as blighted. The major concentration of these dwelling units is bounded by Winthrop Avenue, Patton Drive, and Navy Boulevard.

NEIGHBORHOOD TWENTY ONE

Santa Rosa County seat, Milton, is neighborhood number twenty one. As explained earlier, the requirements for basic economic and social data necessitated the use of a whole census tract or combination, thereof. This worked well in Escambia County, where the tract sizes were relatively small in the urban area. Santa Rosa County tracts, however, were made much larger by the Bureau of the Census criteria with the exception of tract number 106. The City of Milton lies in both census tracts 105-106. The Bureau of the Census did not differentiate between city and county boundaries for Santa Rosa County as they did for Escambia County. That portion of the City of Milton in census tract 105 would be justly represented by the use of statistics available in tract 106, thus, that portion was assigned the statistics of census tract 106. Milton is shown as figure 20 (p.63) and related inventory is shown on page 62. This neighborhood had a value of 6.30 as identified by the Social Pathology Index methodology. This is due to high ranking in the housing, health, and welfare categories. The land uses are typical of those found in the majority of small county seats. A total of 19.8 acres of public parks, or 9.79 acres per 1000 families, were identified by the Regional Planning Council Survey.

The area north of Quinn Bayou and south of Caroline Street (US 90) represented the concentrated areas of blighted housing. Both areas are characterized by older, wooden structures, the southern section also contains Milton's public housing project and the sewage treatment facilities. New construction is taking place north and west of town, leaving these two areas more isolated to encroaching non-residential land uses. Although the 1970 census did not evaluate structures according to physical condition this can be inferred by the category "lacking some or all plumbing facilities", as is listed in their publication (1, p. 5). Over 12 percent or its 2,276 housing units in the City of Milton lacked some or all plumbing facilities. In contrast to this internal statistic, the external housing evaluation conducted by the Regional Planning Council identified approximately 9.0 percent of the housing inventory as blighted. The real number, in all probability, lies somewhere between these two statistics.

The Santa Rosa County Health Department reported the highest rate for VD in the SMSA study area. A total of 32 cases of gonorrhea were treated at the clinic during the 71-72 study period. All of the patients were under 30 years of age. It was pointed out that this figure was actually low, because many people traveled to Pensacola for private treatment thus avoiding local disclosure. Moreover, private physicians do not generally report cases of this nature to a County Health Department. Neighborhood number 21, as reported by the Florida Division of Family Services has the highest welfare rate of any neighborhood within the study area. The statistics used here revealed that the majority of welfare payments were for old age assistance. This neighborhood scored the lowest drug abuse rate of the seven critical neighborhoods.

REFERENCES

1. Bureau of the Census. *1970 Census of Population and Housing Pensacola SMSA.*

2. Lowe, James, *Escambia County Sheriff's Department Narcotics Division. Interview, June 26, 1973.*

IV. BLIGHT-SOCIAL DISORGANIZATION RELATIONSHIPS

The causes of blight are numerous. The most commonly recognized are the physical and environmental defects of a neighborhood such as deteriorated housing, heavy commercial traffic, incompatible mixture of land uses, inadequate public facilities, etc. Most neighborhoods affected by blight have these causes present in varying combinations. Beyond the physical and environmental causes of blight we must list social and economic causes as well. Neighborhood treatment has historically ignored the human element which is in dire need of attention. These human factors are affecting and being effected by blighted conditions.

Psychologists in the early 1950's were advocating an "environmental determinism theory". This theory attempted to explain behavior patterns and life style based upon his environmental background, i.e. the juvenile delinquent lived in a dilapidated housing area "across the tracks" which is the reason he was classified as such. There has been a shift of attention in recent years away from this theory and today it has been largely abandoned. The focus now is on more fundamental problems such as deterioration of individual opportunity, alienation, and social disorganization.

Neighborhoods where both blighted housing and a high amount of social disorganization are prevalent did serve as a frame of reference against which trends of other neighborhoods were compared. This is especially useful where a neighborhood rank in the housing category is relatively low while at the same time ranking high in social disorganization categories such as crime, delinquency, unemployment, and welfare. High rankings in these SPI indicators are an advance warning that social disorganiza-

tion is reaching a magnitude that will eventually be reflected in the neighborhood residents attitude toward and treatment of housing.

Measurements of statistical correlation were made between housing, which is the measure of blight, and each of the other nine indicators that make up the Social Pathology Index. Table 27 (page 87) shows the statistical probability of any combination of pathologies occurring simultaneously within any neighborhood at the same time is shown. The Spearman Rank Order Correlation, as explained in chapter two, was used to construct table 27. A confidence level of 0.05 was selected, which meaning 95 times out of 100 the sample was representative of the universe. This level is the commonly recognized statistical standard. This sets the level of significance for correlation coefficients at 0.5636 for this neighborhood analysis. Social indicators at or above this level are significantly related. Even though some social indicators are associated with coefficients below the 0.5636 level, it is the accummulative combination of all indicators acting upon a neighborhood and it's inhabitants which brings about deterioration in both the physical and social realms.
Certain social indicators appeared at higher magnitudes in all seven neighborhoods identifing areas of critical social disorganization. These social indicators were crime, DYS, welfare, unemployment, mental health, and drug abuse. In some instances a negative correlation between these indicators occurs, as is shown between blighted housing and drug abuse in table 27 (p.87). This means that drug abuse cannot, according to available statistics, be identified with any particular neighborhood housing characteristic. Those associated with drug abuse are considered, by the general public not to be from areas of high social and physical ammenities. Table 26 (pp. 73-4) identifies neighborhoods five

TABLE 27 SOCIAL PATHOLOGY CORRELATION COEFFICIENTS

	HOUSING	VD	TB	FIRES	DYS	MH	WELFARE	CRIME	PARKS	DRUG UNEMP.	ABUSE
HOUSING		.5491	.3261	.5030	.4970	.4744	.8083	.2767	.8212	.4112	-.0148
VD	.5491		.3881	.3307	.2233	.1375	.3083	.4667	.4212	.0867	.1985
TB	.3261	.3881		.5508	.3794	.3704	.8083	.2767	-.0728	.4077	.0206
FIRES	.5030	.3307	.5508		.3794	.4709	.8083	.2767	-.1088	.4082	-.0251
DYS	.4970	.2233	.3794	.3794		.4709	.8083	.2767	-.0728	.4077	-.0251
MH	.4744	.1375	.3704	.4709	.4709		.4246	.3450	.2631	.6471	.4514
WELFARE	.8083	.3083	.8083	.8083	.8083	.4246		.2067	-.1942	.5336	.1290
CRIME	.2767	.4667	.2767	.2767	.2767	.3450	.2067		.4864	.1488	.3636
PARKS	.8212	.4212	-.0728	-.1088	-.0728	.2631	-.1942	.4864		.0390	.4353
UNEMP.	.4112	.0867	.4077	.4082	.4077	.6471	.5336	.1488	.0390		.2565
DRUG ABUSE	-.0148	.1985	.0206	-.0251	-.0251	.4514	.1290	.3636	.4353	.2565	

LEVEL OF SIGNIFICANCE @ 0.05 = 0.5636

and twenty as possessing the highest drug abuse rates for the SMSA, as opposed to data provided by local narcotics agents. Neighborhood five contains the Cordova Park area and neighborhood twenty is the City of Gulf Breeze. Further examination of this table will reveal a lack of blighted structures for either neighborhood.

Welfare has the highest correlation (0.8083) with housing of all the social indicators listed. DYS had an identical correlation level with welfare, but had a 0.4970 correlation when compared to housing. Mental health, crime and unemployment coefficients are below the statistical level of significant relationships, but a relationship is evident and they should not be disregarded. These social variable coefficients were compared to blighted housing coefficients (housing units needing extensive repairs or unsound), and may have been at much higher levels if a third housing category had been incorporated. The third category would have identified housing units in a marginal state of repair, and the extent of a neighborhood's potential future physical blight. Those units identified as structurally marginal would represent transitional areas where the process of social and physical decay should be halted. It is the position of this analysis that areas of heavy blight have passed the state of economically feasible rehabilitation.

The following table identifies and ranks the highest rates of social pathology within each of the seven critical neighborhoods.

TABLE 28

RANKS OF SELECTED SOCIAL PATHOLOGIES

NEIGHBORHOOD	1	8	9	11	13	16	21
HOUSING	2	2	1	6	7	5	3
WELFARE	3	1	2	4	2	1	1
D. Y. S.	6	5	6	5	5	7	-
MENTAL HEALTH	5	6	5	3	3	2	2
UNEMPLOYMENT	4	4	3	2	1	4	5
CRIME	1	3	4	1	6	3	4
DRUG ABUSE	7	7	7	7	4	6	6

This table is taken from table 26 (pp.73-4) entitled "Rates per 1000 Families". The indicators in table 28 were selected because they are the most disorienting factors examined. Within each neighborhood the rates were ranked to determine the importance of each indicator. Blighted housing is included in table 28 to allow the reader to make comparisons between housing and the ranks of social dysfunction. Evaluating a single dysfunction gives rise to falacious deductions in that it is the accumulative affect of all dysfunctions which is responsible for neighborhood deterioration. The table identifies blighted housing to be the major problem in neighborhood nine and the second major problem in neighborhoods one and eight. Welfare was the number one problem in neighborhoods eight, sixteen, and twenty one. Drug abuse was consistantly ranked as one of the lesser or the least critical dysfunction of table 28. Had the local law enforcement agencies kept records as to why crimes were committed this dysfunction, without a doubt, would have achieved a higher ranking. Social disorganization generally ranks above housing in neighborhoods eleven, thirteen and sixteen, but as previously pointed out this is transitory in nature. The

social disorganization will eventually reach levels which will be reflection in the physical element.

Social disorganization is of a more crucial magnitude in the seven neighborhoods identified herein than with the remaining fifteen neighborhoods of the study area. This disorganization affects the individual, his family, close neighbors, and eventually the entire neighborhood. Deterioration of the human element affects individual opportunity, hope, self-esteem and general human welfare. The individual can generally be characterized with a condition of apathy despair, hopelessness (anomie), and alienation, which will be reflected in their physical environment. Those so affected are demoralized by their general situation and do little to improve their immediate environment. In fact, many take out their frustration and alienation on their surroundings, thereby accelerating blight.

V. RECOMMENDATIONS

The overall program design, which identified the guidelines of this work element, was initially written in 1970.

This work element, neighborhood analysis, was at that time scheduled to have the research conducted and be written between July 1, 1972 and June 30, 1973. Due to governmental policy changes, between July 1, 1972 and January 1, 1973 the Department of Housing and Urban Development was in the waning stages of administering numerous programs designed to promote a suitable living environment for those persons lacking such basics of life.

The overall program design allocated a portion of the work program to the development of strategies or methodologies employable within the Pensacola SMSA, which when applied, would curtail or eradicate the cancerous infliction of blight.

Initially, it was the concensus of the authors that this portion of the work element would involve detailed research of existing Federal programs applicable to the various blight associated problems identified by our neighborhood analysis research. The research is to generate recommendations for a plan of action to be adopted and administered by local government. Revenue sharing and the Better Communities Act subsequently surfaced. April 19, 1973, H. R.7277 (The Better Communities Act) was introduced to the first session of the 93rd Congress. The findings and purpose stated in H.R.7277 are:

> ". . . (that) States and units of general local government are the *most* appropriate levels of government to develop and to carry out community development programs and activities.

> Federal assistance for community development is presently so *excessively fragmented and controlled at the Federal level,* channeled through so many separate overlapping and independent grant programs and to so many different special purpose bodies and agencies that it has become an *ineffective* use of the Federal funds devoted to assistance for community development.
>
> The effectiveness of Federal assistance for community development would be improved by making Federal resources allocated for such purposes available to States and *units of general local governments* to use with broad discretion in light of their evaluation of their *own* community development needs and the resources available to them to meet those needs . . ."
> (italics are the Authors) (1,pp. 1-2).

The mandate to "units of general local government" is extremely obvious, local government must provide financial assistance for community development if community development is to occur. The "Better Communities Act", when passed, will authorize funding for each of the fiscal years from 1974 to 1979. This act actually destroys the following HUD categorical programs: urban renewal, neighborhood development programs, code enforcement, demolition grants, model cities, neighborhood facilities, water and sewer grants, open space and historical preservations, rehabilition loans and public facilities loans. The Better Communities Act does *not,* in its present form, affect housing or community planning. This act, the Better Communities Act, negated the justification for a detailed study of Federal assistance applicable to blight problems.

Thus, as a result of the current action undetaken by the Federal government, all the strategies suggested in this chapter hinge upon a 100 percent fiscal and physical effort

on the behalf of local government, without the aid of "excessively fragmented and controlled" categorical Federal programs, plus their desire to provide such amenities. Seemingly the strategy to follow between now and 1979, in relation to blight related problems, would be the continuation of the deleted Federal programs, by local government, with funds received from revenue sharing and the Better Communities Act appropriations. Apparently this is one goal the Federal government is hoping to achieve. Or is it? Could it be that the Federal government has realized that those programs which were destroyed, were failures in that they did not achieve their specified goals or objectives? Or does the Federal government feel that some strategy is necessary to shift emphasis from the burdensome socially oriented programs to measurable environmental programs; the result of which will actually be achieved by H.R. 7277 and revenue sharing?

The statement above, which poses the reality of more monies to be spent in the environmental field and less in the social field, is based upon the intended use of revenue sharing monies in the Pensacola SMSA. May 24 and 25, 1973, each governmental body in the Pensacola SMSA was contacted by a staff member of the Escambia-Santa Rosa Regional Planning Council. The purpose of this contact was to list the projects for which revenue sharing money would be spent.

The composite list of projects for the Pensacola SMSA includes: construction of a library, the purchase of road maintenance equipment, road improvements, purchase of parks and recreation equipment, purchase of a parkway right-of-way, the construction of a central garage, the drilling of a waterwell, purchase of chlorination equipment, upgrade water and sewer mains, a drainage study, a

community center, a non-Federal neighborhood development project, a summer recreation programs, an addition to an existing building to house new fire fighting equipment, and possibly some type of social program.

As one can see, social related proposals appear to be a one time program. The non-Federal neighborhood development is the only proposed project which will have any direct long range affect upon the social impact of the Pensacola SMSA.

Ignoring speculation the elimination of blight is once again the sole responsibility of local government, as was the case prior to the initiation of "excessively fragmented and controlled" Federal programs. This harsh reality stems from the genesis and proliferation of blight, blight related apathy, and lack of direct local government action in the blight eradication spectrum.

Blight, itself, is conceived through the utter lack of personal pride, total disregard for others, and the lack of community identity, the results of which are permitted to develop into strongly entrenched habits initially tolerated and eventually becoming common or accepted practices, with a total disregard of the resultant impact. Therefore, when local government permits such practices to continue, they automatically accept the burden, to the degree necessary, in order to reverse such practices to protect the vast majority from the squalor perpetrated upon them by the ignorant, prideless, and inconsiderate minority (the term minority refers to number only).

Throughout this chapter we discuss the blight problem in generalities. We take this opportunity to qualify this generality by stating that the cities of Pensacola and Gulf Breeze, for all practical purposes, are exceptions to the

lack of structural blight control methodologies. For all practical purposes, the City of Gulf Breeze has not experienced the blight enigma.

Local government can curtail the cancerous growth of blight by three physical strategies. First, a comprehensive code enforcement program is a mandatory tool for those units of local government lacking such implements.

A comprehensive code enforcement program consists of a building, plumbing, gas, electrical, and minimum housing code which are adopted, annually updated, applied, and rigorously *enforced* throughout the entire jurisdiction of the appropriate units of local government. Ultimately these codes should be compatible between governmental jurisdictions.

A comprehensive code enforcement program directed at the existing vacant housing inventory and any future vacant housing units would ensure that the total housing inventory would eventually become decent safe, and sanitary. For example, if a vacant housing unit did not contain the appropriate plumbing facilities necessary to meet the minimum code requirements, action must be taken to prohibit occupance until such plumbing deficiencies are appropriately taken care of. Another example involves the transportation of condemned or unacceptable structures from one governmental jurisdiction to with a minimum housing code to a jurisdiction which does not have a minimum housing code. This example will become, if it has not already, a reality when the I-110 spur right-of-way into the City of Pensacola is purchased. Without an enforced minimum housing code in Escambia County some of the structure within the right-of-way will inevitably be moved from the City of Pensacola to some site in Escambia County, subsequently adding to the county's

inventory and associated burden of sub-standard housing units.

Actually, existing sub-standard housing units, if vacant and marginally or uneconomically feasible to renovate, should be removed from the existing housing inventory thru demolition.

A comprehensive code enforcement program must apply to the rental units within the Pensacola SMSA in particular. It is the authors feeling that absentee landlordism is highly conductive to the genesis and proliferation of the decadence associated with and of blight proper. Further, it is our hypothesis, based upon a limited amount of personal experience, that a large number of absentee landlords collect rent monies but fail to maintain their property in a fashion required to stay deterioration. On the other hand, many renters are also at fault due to their failure to treat rental property with the proper respect necessary to perserve a structure in a livable, non-deteriorating condition.

A second strategy involves the development of an extensive "aesthetic" ordinance. This ordinance must apply directly to the health hazard and aesthetic decadence generated by the accumulation of refuse (junk, garbage, odds and ends, etc.) upon property parcels.

The aesthetic ordinance must be structured to eliminate the existance of an accumulation of junk washing machines and refrigerators, etc. upon open property parcels as evidenced by figure 28 (p. 100), the appearance of degenerative land uses, i.e. such as a second hand store using a vacant single family residence as a storage facility (fig. 29 p. 100) the accumulation of garbage upon idle property owned by local government (fig. 30 p. 100) as well as upon private property.

It is our recommendation that an aesthetic ordinance be broad enough to cover property which contains abandon commercial uses (figures 31 and 32 pp. 101-2) and our valuable shoreline (figures 33 and 34 pp. 102-3).

Third, a form of land use regulation must be enacted to provide viable guidance for the development of an area, and they are also necessary to provide a basis for the logical criteria necessary to guide development and planning activities. Land use regulations are a primary tool for the orderly growth of any area. This strategy is mentioned because the majority of the land area in the Pensacola SMSA is in the rudimentary guidance stages, typically lacking the basic benefits provided by proper land use regulations. The rudimentary stage is a degenerative stage, that is the quality of the natural endowment is continually diminishing due to the lack of proper guidance.

Figures 35, 36, 37, & 38 pp. 103-5 illustrates the lack of land use regulations better than a lengthy narrative. The figures identify the presence of tank farms in a residential neighborhood, commercial-residential conflict, conflicting residential styles, and a combination of agricultural-residential-industrial uses, all examples are representative of areas which lack land use regulations.

Land use regulations (zoning) proposals for the unincorporated areas of the Pensacola SMSA have met with unsurmountable opposition on at least three separate occasions. During each occasion land use regulations were presented as a zoning ordinance, which public opinion felt dictated land use and, thus, lead to the rejection of each proposed ordinance by county residents. It is quite possible we are fortunate that such land use regulations (zoning) have been entirely unsuccessful. It is evident that the typical land use regulations, when applied to large land



FIGURE 28 JUNK ACCUMULATION



FIGURE 29 CONVERTED RESIDENTIAL USE



FIGURE 30 INDESCRIMINATE TRASH DUMPING



FIGURE 31 COMMERCIAL ABANDONMENT



FIGURE 32 COMMERCIAL ABANDONMENT



FIGURE 33 WATERFRONT ABANDONMENT



FIGURE 34 SHORELINE LITTER



FIGURE 35 INDUSTRIAL-RESIDENTIAL CONFLICT



FIGURE 36 COMMERCIAL-RESIDENTIAL CONFLICT

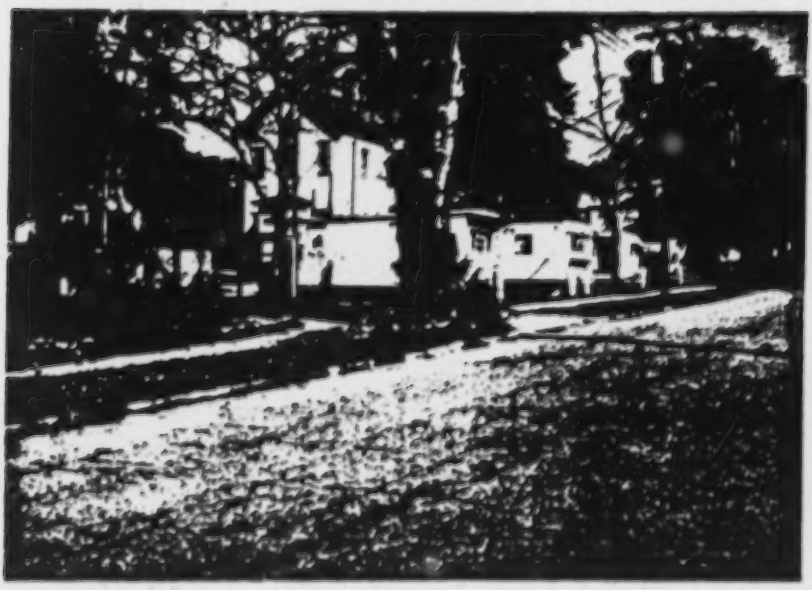


FIGURE 37 RESIDENTIAL CLASS CONFLICT



FIGURE 38 AGRICULTURAL-RESIDENTIAL-INDUSTRIAL INCOMPATIBILITY

areas, tend to stifle the creativity of developers and promote a creative sterility and dull, monotonous land uses. Fortunately, another alternative is available.

Sterility and monotony must be avoided for the sake of every one concerned. Therefore, we recommend the consideration of the type of land use regulations approach developed by the Regional Planning Council of Baltimore, Maryland. This approach is labeled Environmental Characteristics Planning (ECP). Environmental Characteristics Planning

> ". . . has no preconceived notion about uses. The decision as to whether a particular activity will be appropriate at a given location is made on the basis of its compatibility with the environmental character of an area. If the intensity level and landscaped area are in keeping with the

environmental characteristics, use becomes a secondary consideration.

The ECP approach encourages diversified development patterns. Individual proposals prepared by designers and planners are evaluated on the basis of their conformity to the environmental characteristic type. By guiding overall development, the proposed systems would achieve the purpose of planning and zoning while, at the same time allowing initiative, originality and self-expression in individual developments. The end product would be a higher quality in urban character." (2, p. 5)

Such a strategy would permit more latitude for developers which would in turn result in a more aesthetic and environmentally protective type of land development.

The three strategies already mentioned; a comprehensive code enforcement program, an "aesthetic" ordinance, and a viable form of a land use package, are typical of historical blight treatment strategies. The type of blight treated by the suggested strategies is that of visual blight *only*. An out of sight, out of mind, strategy does little to accomplish the objective of this work element, which is the eradication of blight in the Pensacola SMSA.

This strategy tends to accomplish what the Federal government has achieved with their urban renewal action. Urban renewal activities mobilized blight generators and dispersed those generators throughout areas which had, up until that time, resisted the cancerous decay and decadence of blight. Therefore, we feel these strategies must be accompanied by actions directed toward solving the social ills also inherent in blight areas. It is a combination of treatment strategies, physical and social, which we feel will achieve the sought after objective. One treatment

without the other will *not* serve to curtail, let alone eradicate, blight in the Pensacola SMSA.

The approach to restore social viability must be multi-facial in character. Programs must be realistic in concept, far reaching in application, and generate a maximum return for monies expended. Moreover, programs must not be confined within the political boundary lines of a particular governmental entity, because blight and its inherent social problems are indiscriminantely affecting most of the Pensacola SMSA. This neighborhood analysis has identified blighted housing areas and associated social disorganization as depicted in figure 20 (p. 53), 25 (p. 63) and 27 (p. 71).

According to the Intergovernmental Program Office a total of 35 social-service organizations are operating in Pensacola and Escambia County. Larger social service organizations are Federally funded in part, and as such are faced with the requirement of procuring additional sources of operating revenue. The matching federal grant programs are no longer in existance due to the passage of the State and Local Fiscal Assistance Act of 1972. President Nixon signed this act on October 20, 1972. This act requires annual appropriations from general revenue sharing funds, for a five-year period, retroactive to January 1, 1972. In effect, many local social service organizations are extremely reliant revenue sharing funds for the continued operation of their programs.

On the neighborhood level, many social programs, that have been affected by funding problems, are active in the critical area identified by this neighborhood analysis. Namely:

1. Welfare
2. Unemployment
3. Crime
4. Division of Youth Services (Juvenile delinquency)
5. Mental Health
6. Drug Abuse

These six pathologies were chosen not only because of their omnipresence, but because their cumulative effect is crucial upon the human element of neighborhoods.

Local government can restore social viability by implementation of two basic strategies: the organization of neighborhood associations, and the creation of a Regional Human Resource Agency. Neighborhood association is a grass roots organization of deprived citizens striving to claim their fair share of local governmental services.

Neighborhood associations must be established within those areas of critical social disorganization. The number of associations would be dependent upon geographic size, population densities, and organization manageability. The Madison, Wisconsin, City Planning Department established 22 neighborhood associations. According to their plan:

> "all neighborhoods have advantages and problems. But even if there were no problems, nothing is so good that it can't be improved. A neighborhood organization can help do that if it is capably led, well organized, and representative of all residents. It can find problems you didn't know were there, and prevent other problems from occurring in the future. It's likely your area does have some problems. Those could be in the areas of housing, schools, transportation, jobs, or any of a number of others. A neighborhood organization can help residents start thinking about their problems and it can give direction to

a community's efforts to solve its problems. To do this, community understanding is essential.

Some problems can be handled by one person. He can cut his grass, or paint his house. But he can't do the same for all his neighbors. They must do it for themselves. If they don't, it won't really matter if there's one nice house on a block of deteriorating homes. All your neighbors must be aware of the fact that they should keep up their homes. Total cooperation is necessary."

The resident knows his problems better than others and will provide his ideas and knowledge to solve neighborhood problems. The neighborhood association concept is based on the premise of citizen participation and involvement in the decision making process. The genesis for such a program is generally provided by the lack of governmental attention. Citizen participation provides public officials and social service organizations with the needs, desires, and attitudes of the neighborhood residents. It is mandatory that the people who make final decisions, in addition to the people who are affected, participate in the neighborhood association. A neighborhood association organizational chart may take many forms. But, the idea of a capably led group representative of all residents, is central.

Dynamic neighborhood association inputs, into the decision making process, will bring about desired goals and objectives. Better neighborhoods will occur when residents local government cooperation is achieved. When neighborhood residents see positive actions being taken by local government and governmental programs, a mental attitude accomplishment will be felt. Effective neighborhood associations thus eliminating the residents feeling of alienation, despair, helplessness, discrimination, and apathy.

The second social strategy is the creation of a Regional Human Resource Agency and the expansion of specified social service functions.

The concept of a county level Department of Human Resources is one of several alternatives currently being considered by the Escambia County Commissioners. This department would assume the functions of the Community Action Program, in addition to planning and coordinating the activities of all county supported social service agencies. The R.H.R.A., as advocated by the authors should be an autonomous agency responsible for coordinating and planning a broad spectrum of all social services for *all* residents of the Pensacola SMSA. It would be jointly funded by the seven local governmental units with a portion of their general revenue sharing funds. The Regional Human Resource Agency would serve as the coordinating agency for those 35 local organizations as well as related programs on the State and Federal level. The membership should include one representative from each organization providing social services in the area as well as one representative from the United Way.

A single agency in the coordinative role would eliminate duplication of effort, thus maximizing appropriated and matching funds. The Federal action involving social service programs requires that local governmental units decide which programs will receive through general revenue sharing funding. The Regional Human Resource Agency will identify the viability and funding needs of each agency through cost-effectiveness methodologies. This is current practice by the Community Planning Division of the United Way (formerly United Fund). Thus a Regional Human Resource Agency would provide more effective approaches to the solution of social disorganization through planning and coordination of fragmented programs and efforts.

This neighborhood analysis has identified seven neighborhoods surpassing critical levels of social disorganization. These neighborhoods are located in the cities of Milton and Pensacola and in Escambia County. The social disorganization syndrome transcends all political boundary lines, thereby, becoming a problem to more than one governmental entity. To be effective, social programs and services dealing with the many facets of social disorganization must be able to transcend such boundary lines also.

In addition to the creation of the Regional H.R.A. the restoration of social viability requires additional funding and expansion of specified social service organizations. These social service organizations include, but are not limited to:

1. The Community Action Program
2. A comprehensive Child Day Care Center Agency
3. A Youth Service Center combined with the Boy's Club of Escambia and the Florida Division of Youth Services; and
4. The Community Mental Health Association

The Regional Human Resource Agency would absorb the Community Action Program Committee, Inc., and would assume their overall administrative, planning, and coordinative role in addition to their current work program. The Community Action Program is a private non-profit corporation, whose function is to mobilize and channel the resources of private and public organizations and institutions into anti-poverty action. The Green Amendment to the 1964 Economic Opportunity Act allows local government to assume, by resolution, CAP funding and operations. This would allow public rather than private

agency status. The following agencies are identified because their existing work programs treat six of the social pathology indicators examined in this analysis.

The Escambia County Community Central Services provide day care services to those children of low income families in Pensacola and Escambia County. The agency is 75 percent Federally funded and 25 percent of its funds are provided locally. The concept of day care centers is twofold: it allows the mother to seek employment or training opportunities to employment; and it provides the child with a creative curriculum plan and comprehensive services such as dental and medical attention, and necessary social and psychological counseling. Eighty-seven percent of the present caseload within the existing program is single parent families. An expansion of these facilities within neighborhoods one, eight, nine, and twenty-one would provide the unemployed mother with the opportunity to escape her alienated environment and become a more viable member of society. Once employment is secured the working parent would lessen her burden upon society by either reducing or eliminating her welfare requirements.

The authors advocate that crime and juvenile delinquency problems within the seven critical neighborhoods will be handled by the combined efforts of three agencies. These agencies are: A Youth Service Bureau, (to be created within the Regional Human Resource Agency and administer to pre-delinquent needs), the Escambia Boys Club (to provide recreational needs) and the Florida Division of Youth Services, (which serves a post-delinquent function).

In their report *The Challenge of Crime in a Free Society* the President's Commission on Law Enforcement and Administration identified Youth Service Bureaus as a suc-

cessful approach to juvenile delinquency prevention. Youth Service Bureau divert from the justice system children who have not committed criminal acts, but whose problems in school, at home or in the neighborhood may lead them to do so if they do not receive guidance. They also deal with minor offenders whose behavior is rooted in similar problems. According to the Commissions report:

> "A Youth Service Bureau is *not* a part of the justice system. Its ultimate goal is delinquence prevention. It accepts referrals from the police, the intake department of the court, the schools, parents, and youth themselves; provides short-term counseling; coordinates community resources on behalf of those who need them; strengthens existing agencies by purchasing services if necessary; develops new resources when appropriate services cannot otherwise be obtained; and works to modify community attitudes and practices whch create delinquency-breeding situations. Its role is that of a catalytic change agent. However, it is not a panacea for delinquency, nor does it attempt to cure all social ills."

The bureau would also obtain data on deficiencies in youth services, prepare plans, and suggest alternatives for the Regional Human Resource Agency. The Agency would select priorities and allocate funding.

The Escambia Boys Club, Inc. provides recreational and physical fitness programs for boys 7 to 18 years of age. Little narrative is required to relate the success of such clubs in deprived socio-economic areas of cities across the nation. Either more Boys Club facilities need to be constructed or direct outreach programs initiated to better serve community needs. Particular emphasis should be placed upon public housing projects where, juvenile delin-

quent problems are concentrated, in addition to neighborhood one, eight, nine, sixteen and twenty-one.

The juvenile courts process over 4000 referrals per year to the Florida Division of Youth Services. Approximately one-half of this figure is children in need of supervision (C.I.N.S.) and the other half are actual law violaters. This division deals with juvenile problems on a post-facto basis and is part of the justice system. This division works closely with the Boys Club on a referral basis and serves to bridge the gap between the juvenile court and the juvenile offender. An indicator of the effectiveness of the Boys Club and the Youth Service Bureau could be measured by reduced case-loads within the court and Division of Youth Services. The authors are of the opinion that when juvenile crimes are eliminated today, the adult crime rate of tomorrow will also be reduced.

The Community Mental Health Association, a two-county agency, is administering drug abuse and mental health programs. During the past year the mental health center provided various treatments to over 4,000 patients, many of which are residents in the seven neighborhoods displaying critical levels of social disorganization. The case load would have no doubt been larger if the service was provided on the neighborhood level. Direct outreach programs are needed in those neighborhoods where high rates of drug abuse and mental health were identified.

The foregoing discussion dealt with how five existing and one new social service organization could work, under a Regional Human Resource Agency, to restore social viability on the neighborhood level. As stated earlier some thirty-five social-service organizations, both public and private, are operating in the city of Pensacola and Escambia County at the present time. The Regional Human

Resource Agency is a logical planning and coordinating body for social services. In summary, our recommendations are divided into two distinct areas:

1. The physical restoration
2. The restoration of social viability.

The physical restoration methodologies urged a conservation attitude through a comprehensive code enforcement program, and aesthetic ordinance, and some form of land use control.

Neighborhood viability occurs when the level of social disorganization is reduced or eliminated. This will be done in two steps. Organizing neighborhood associations to serve as the voice of the neighborhood to local government and eliminating social pathologies through the coordinated efforts of the Regional Human Resource Agency. The success or *failure* to curtail and eradicate blight rests entirely with elected officials and neighborhood residents.

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Office - Supreme Court, U.S.
FILED
AUG 8 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1295

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX
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Appeal Docketed February 2, 1983
Probable Jurisdiction Noted April 18, 1983

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NOTE

The following opinions, decisions, judgments, and orders have been omitted in printing the Joint Appendix because they appear in the Appendices to the Jurisdictional Statement as follows:

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Decision of the Fifth Circuit in *McMillan* v. *Escambia County, Florida*, 638 F.2d 1239 (5th Cir. 1981) B-30a

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Memorandum Decision and Order of the United States District Court for the Northern District of Florida in *McMillan* v. *Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla. Dec. 3, 1979) B-54a

Memorandum Decision of the United States District Court of the Northern District of Florida in *McMillan* v. *Escambia County, Florida* PCA No. 77-0432 (N.D. Fla., Sept. 24, 1979) B-66a

Memorandum Decision and Judgment of the United States District Court of the Northern District of Florida in *McMillan* v. *Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla. July 10, 1978) B-71a

Judgment in *McMillan v. Escambia County, Florida*, 688 F.2d 960 (5th Cir. 1982).....C-116a

EXHIBIT 21

UNITED WAY OF ESCAMBIA COUNTY, INC.
COMMUNITY PLANNING DIVISION

COMPOSITE SOCIO-ECONOMIC INDEX FOR THE 40 CENSUS TRACTS COMPRISING ESCAMBIA COUNTY (PHASE I OF YOUTH AGENCY STUDY PROJECT)

In an effort to determine the areas of greatest social and economic need in Escambia County, each of the 40 census tracts making up the County were ranked in accordance with the following 13 indices:

a. Total Population
b. Non-White Population
c. School Age Population
d. Percent of Homes Overcrowded (1)
e. Percent of Homes Dilapidated (1)
f. School Year Completed
g. Rate of Children Determined by the Juvenile Court to be in Need of Supervision (2)
h. Rate of Juvenile Delinquency (2)
i. Percent of Cases on Aid to Families with Dependent Children (3)
j. Percent of Homes Owner Occupied
k. Median Rent
l. Median value of Dwelling
n. Median Income

(1) Based upon total dwellings within census tract.
(2) Based upon rate per 100 school age population in each census tract.
(3) Based upon percent of each census tract population.

Each of the 40 census tracts were ranked in order of ascendency for indices "a" through "i". Thus, the census tract having the highest rate of juvenile delinquency was assigned the rank of "40" for that category of measurement. Similarly, the census tract having the fifth highest percent of cases on "Aid to Families with Dependent Children" was assigned the rank of "36" for that index. For indices "j" through "n" census tracts were ranked in descending order. For example, the census tract having the highest median income was ranked "I" and the one having lowest median income was ranked "40". Likewise, the census tract reflecting the 16th highest median value of a dwelling was given the rank of "16". The composite socio-economic index, shown on page 2, reflects the average of the 13 individual rankings for each census tract. It will be noted that Census Tract "6", which has a composite index of 33.85, has the highest degree of socio-economic need. Census Tract "25", which has a composite index of 6.04, has the lowest incidence of social and economic need.

Table I, page 3, shows how each census tract ranked in reference to the 13 indices used in arriving at a composite index. In viewing this data, keep in mind a high individual index ranking reflects an unfavorable situation.

Following Table I, are profile sheets for each of the 40 census tracts in Escambia County. These sheets show specific data for each census tract as compared to the median average for the County.

COMPOSITE SOCIO–ECONOMIC INDEX OF CENSUS TRACTS IN ESCAMBIA COUNTY, FLORIDA

(Ranked in descending order by degree of social-economic need)

RANK	CENSUS TRACT NO.	COMPOSITE INDEX
1	6	33.85
2	4	33.30
3	7	32.26
4	15	31.50
5	2	29.00
6	16	27.85
7	17	27.85
8	40	27.15
9	20	26.30
10	32	25.77
11	18	25.54
12	14	25.00
13	39	22.88
14	3	22.57
15	22	22.50
16	1	21.76
17	8	21.65
18	21	20.77
19	27	20.35
20	35	20.11
21	38	20.00
22	33	19.96
23	37	19.50
24	19	19.03
25	5	18.92
26	36	18.80
27	23	17.80

RANK	CENSUS TRACT NO.	COMPOSITE INDEX
28	34	17.30
29	30	16.50
30	29	15.80
31	13	15.11
32	28	13.73
33	31	12.80
34	12	12.35
35	24	11.85
36	11	11.23
37	26	9.54
38	10	9.30
39	9	6.35
40	25	6.04

INCIDENCE OF NEED

High – 33.85	Very Low	–	0.00 to 9.90
Median – 20.55	Low	–	10.00 to 16.90
Low – 6.04	Average	–	17.00 to 24.90
	High	–	25.00 to 29.90
	Very High	–	30.00 to 40.00

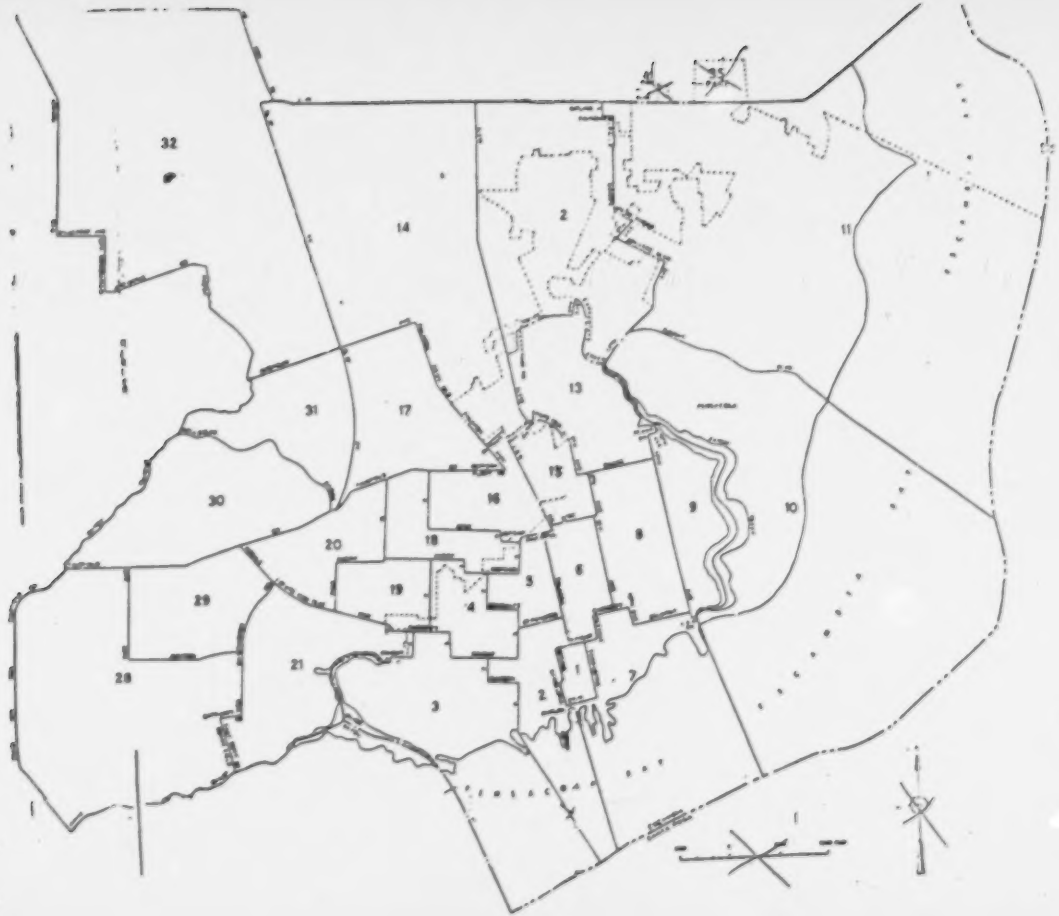
TABLE I COMPOSITE AND INDIVIDUAL RANKING OF CENSUS TRACTS IN ESCAMBIA COUNTY BY VARIOUS INDICES OF SOCIAL-ECONOMIC NEED

CENSUS TRACT NO.	RANK IN ORDER OF NEED	COMPOSITE RANK	POPULATION	NON-WHITE POPULATION	SCHOOL AGE POPULATION	PCT. OF HOMES OVERCROWDED	PCT. OF HOMES DILAPIDATED	PCT. OF HOMES OWNER OCCUPIED	MEDIAN RENT	MEDIAN VALUE OF DWELLING	MEDIAN INCOME	SCHOOL YEAR COMPLETED	RATE OF CHILDREN IN NEED OF SUPERVISION(1)	RATE OF JUVENILE DELINQUENCE (2)
6	1	33.85	23	39	24	36	39	34	35	32.5	38	33.5	33	35
4	2	33.30	27	40	31	39	32	35	37	35	37	30	21	33
7	3	32.26	7	33	10	34	31	37	39	32.5	39	39	39	39
15	4	31.50	9	37	15	38	37	29	33	29.5	35	40	38	30
2	5	29.00	13	35	9	33	35	36	30	34	36	30	16	37
16	6	27.85	11	36	18	40	40	32	36	36	33	36	18	25
17	7	27.85	19	34	25	31	27	28	30	28	32	32	6	36
40	8	27.15	16	30	20	32	38	16	40	39	34	36	11	11
20	9	26.30	10	28	11	27	30	23	24.5	25	28	33.5	37	38
32	10	25.77	35	38	38	35	29	5	11	16.5	40	19	14	23
18	11	25.54	21	20	17	22	23	20	27	31	30	36	32	28
14	12	25.00	32	31	35	25	21	18	19	16.5	18.5	17.5	27	34

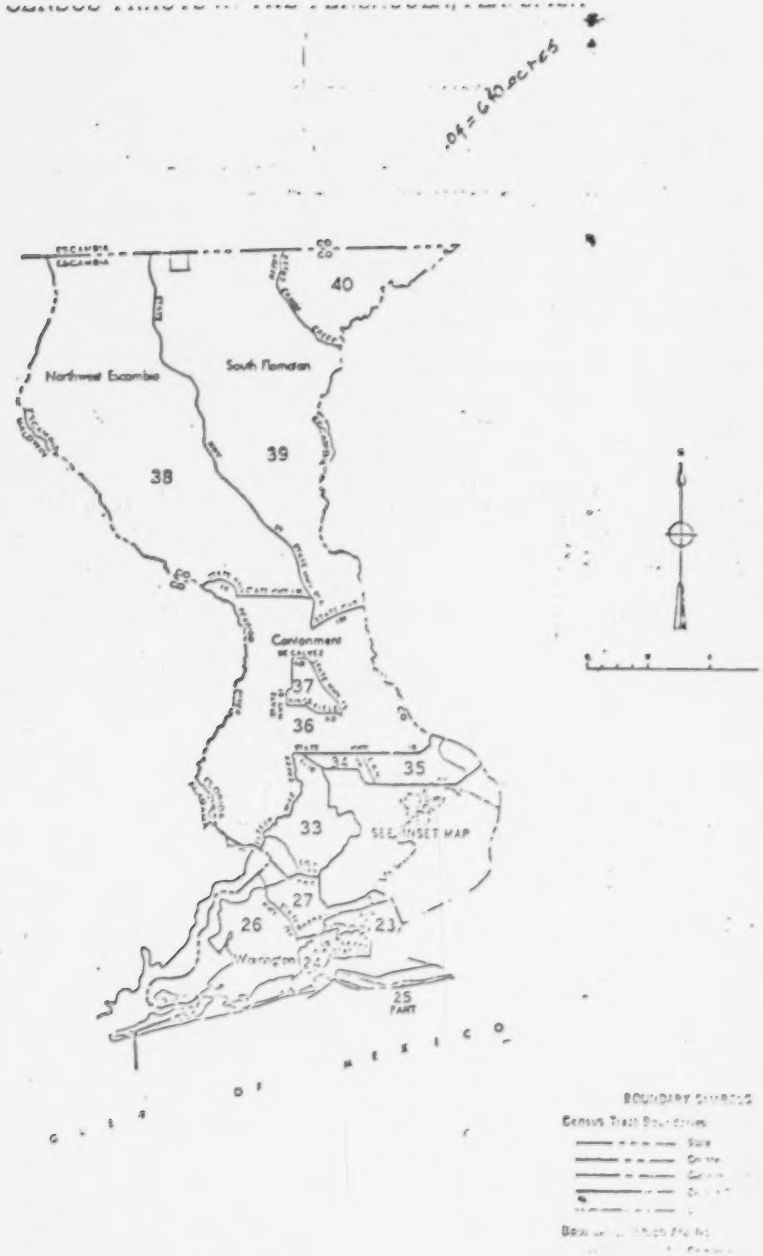
CENSUS TRACT NO.	RANK IN ORDER OF NEED	COMPOSITE RANK	POPULATION	NON-WHITE POPULATION	SCHOOL AGE POPULATION	PCT. OF HOMES OVERCROWDED	PCT. OF HOMES DILAPIDATED	PCT. OF HOMES OWNER OCCUPIED	MEDIAN RENT	MEDIAN VALUE OF DWELLING	MEDIAN INCOME	SCHOOL YEAR COMPLETED	RATE OF CHILDREN IN NEED OF SUPERVISION(1)	RATE OF JUVENILE DELINQUENCE (2)
39	13	22.88	12	21	16	30	36	9	38	38	26	30	14.5	8
3	14	22.57	18	24	12	19	19	25	24.5	23	25	27	24	31
22	15	22.50	28	17	29	24	10	33	30	20	27	13.5	23	24
1	16	21.76	1	13	1	26	28	39	9	24	31	24	40	40
8	17	21.65	25	29	13	14	14	24	23	15	21	17.5	35	27
21	18	20.77	29	8	26	9	13	30	16	22	22	20	36	19
27	19	20.35	15	26	14	20	26	21	8	29.5	29	26	13	26
35	20	20.11	40	27	39	21	24	7	20	10	20	15.5	9	9
38	21	20.00	5	19	8	29	34	29	32	37	24	38	25	2
33	22	19.96	36	7	36	15	20	6	26	18	14	21.5	30	12
37	23	19.50	14	32	19	36	33	11	34	26	17	25	2.5	2
19	24	19.03	6	1	5	17	16	26	21.5	27	23	18	34	22
5	25	18.92	3	25	3	28	25	27	28	5	6	7	28	32
36	26	18.80	39	18	40	16	22	4	20	12	11	21.5	7	6

CENSUS TRACT NO.	RANK IN ORDER OF NEED	COMPOSITE RANK	POPULATION	NON-WHITE POPULATION	SCHOOL AGE POPULATION	PCT. OF HOMES OVERCROWDED	PCT. OF HOMES DILAPIDATED	PCT. OF HOMES OWNER OCCUPIED	MEDIAN RENT	MEDIAN VALUE OF DWELLING	MEDIAN INCOME	SCHOOL YEAR COMPLETED	RATE OF CHILDREN IN NEED OF SUPERVISION(1)	RATE OF JUVENILE DELINQUENCE (2)
23	27	17.80	33	16	22	10	9	31	14.5	14	13	7	31	16
34	28	17.30	17	23	21	23	18	10	13	21	16	23	20	8
30	29	16.50	30	12	34	13	15	14	3	11	10	11.5	29	17
29	30	15.80	24	5	28	12	2	15	8	19	15	15.5	25	20
13	31	15.11	26	22	30	7	7	3	6.5	6	5	7	22	29
28	32	13.73	38	10	32	8	5	8	3	8	7	9.5	26	18
31	33	12.80	22	9	27	5	12	1	18	13	9	9.5	17	15
12	34	12.35	31	11	23	1	11	22	4	7	8	11.5	12	11
24	35	11.85	20	15	7	18	1	-	21.5	40	18.5	2.5	5	4
11	36	11.23	37	4	37	3	8	2	1	2	3	4	19	21
26	37	9.54	4	6	6	11	17	19	12	9	12	13.5	2.5	5
10	38	9.30	34	2.5	33	6	3	17	2	1	1	2.5	10	14
9	39	6.35	8	14	4	4	4	13	10	4	4	5	15	13
25	40	6.04	2	2.5	2	2	6	38	6.5	3	2	1	2.5	2

(1) Based upon school age population of Census Tract.
(2) Based on individual Census Tract population.



75%


40
Northwest Escambia
South Flomaton
39
38
Cantonment
37
36
35
34
33
SEE INSET MAP
27
26
23
Warrington
25
PART
M E X I C O
G U L F

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 1
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Wright
South	Main
East	Tarragona
West	Spring; Barcelona

Other identification:

Total Population 260 Non-White Population 107 School Age population 30 Composite Index of Social Need 21.76 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 16

Selected Social & Economic Indices	*Census Tract* No. 1	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	200.00	17.88
(Number of Juvenile Delinquency Cases)	6	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	33.3	6.34
(Number of CINS Cases)	1	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	4.61%	1.05%
(Number of AFDC Cases)	12	xxxxxxxx
Percent of Homes Overcrowded[1]	2.5%	2.15%
(Number of Homes Overcrowded)	3	xxxxxxxx
Percent of Homes Dilapidated[1]	10.1%	3.5%
(Number of Homes Dilapidated)	12	xxxxxxxx
Percent of Homes Owner Occupied[1]	22.7%	63.8%
(Number of Homes Owner Occupied)	27	xxxxxxxx
Median Monthly Rent	$125	$114.50
Median Value of Dwelling	$8800	$11,300
Median Annual Income	$5000	$7,723
Median School Year Completed	11.5 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 2
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Cervantes
South	Pensacola Bay
East	"A" Street
West	Bayou Chico

Other identification:

Total Population 3820 Non-White Population 1959 School Age population 893 Composite Index of Social Need 29.00 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 5

Selected Social & Economic Indices	*Census Tract* No. 2	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	48.15	17.88
(Number of Juvenile Delinquency Cases)	43	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	5.60	6.34
(Number of CINS Cases)	5	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	3.76%	1.05%
(Number of AFDC Cases)	144	xxxxxxxx
Percent of Homes Overcrowded[1]	4.7%	2.15%
(Number of Homes Overcrowded)	312	xxxxxxxx
Percent of Homes Dilapidated[1]	18.5%	3.5%
(Number of Homes Dilapidated)	312	xxxxxxxx
Percent of Homes Owner Occupied[1]	35.8%	63.8%
(Number of Homes Owner Occupied)	605	xxxxxxxx
Median Monthly Rent	$70	$114.50
Median Value of Dwelling	$7300	$11,300
Median Annual Income	$4811	$7,723
Median School Year Completed	9.7 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 3
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Gadsden; Wright
South	Pensacola Bay
East	"A" Street
West	Bayou Chico

Other identification:

Total Population 4659 Non-White Population 583 School Age population 1038 Composite Index of Social Need 22.57 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 14

Selected Social & Economic Indices	*Census Tract* No. 3	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	27.94	17.88
(Number of Juvenile Delinquency Cases)	29	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	7.71	6.34
(Number of CINS Cases)	8	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	1.22%	1.05%
(Number of AFDC Cases)	56	xxxxxxxx
Percent of Homes Overcrowded[1]	2.1%	2.15%
(Number of Homes Overcrowded)	37	xxxxxxxx
Percent of Homes Dilapidated[1]	2.9%	3.5%
(Number of Homes Dilapidated)	52	xxxxxxxx
Percent of Homes Owner Occupied[1]	60.3%	63.8%
(Number of Homes Owner Occupied)	1061	xxxxxxxx
Median Monthly Rent	$90	$114.50
Median Value of Dwelling	$9100	$11,300
Median Annual Income	$7221	$7,723
Median School Year Completed	10.5 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 4
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Avery; Moreno
South	Wright
East	"A" and "F" Sts.
West	"P" Street

Other identification:

Total Population 5932 Non-White Population 5508 School Age Population 1980 Composite Index of Social Need 33.30 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 2

Selected Social & Economic Indices	*Census Tract* No. 4	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	31.31	17.88
(Number of Juvenile Delinquency Cases)	62	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	6.57	6.34
(Number of CINS Cases)	13	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	4.53%	1.05%
(Number of AFDC Cases)	269	xxxxxxxx
Percent of Homes Overcrowded[1]	10.6%	2.15%
(Number of Homes Overcrowded)	190	xxxxxxxx
Percent of Homes Dilapidated[1]	16.5%	3.5%
(Number of Homes Dilapidated)	297	xxxxxxxx
Percent of Homes Owner Occupied[1]	41.3%	63.8%
(Number of Homes Owner Occupied)	743	xxxxxxxx
Median Monthly Rent	$58	$114.50
Median Value of Dwelling	$7200	$11,300
Median Annual Income	$4388	$7,723
Median School Year Completed	9.7 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 5
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Maxwell
South	Cervantes
East	Palafox
West	"A" Street; "F" Street

Other identification:

Total Population 2203 Non-White Population 778 School Age population 512 Composite Index of Social Need 18.92 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 25

Selected Social & Economic Indices	*Census Tract* No. 5	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	31.25	17.88
(Number of Juvenile Delinquency Cases)	16	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	11.72	6.34
(Number of CINS Cases)	6	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	2.63%	1.05%
(Number of AFDC Cases)	58	xxxxxxxx
Percent of Homes Overcrowded[1]	3.0%	2.15%
(Number of Homes Overcrowded)	28	xxxxxxxx
Percent of Homes Dilapidated[1]	7.2%	3.5%
(Number of Homes Dilapidated)	68	xxxxxxxx
Percent of Homes Owner Occupied[1]	59.8%	63.8%
(Number of Homes Owner Occupied)	563	xxxxxxxx
Median Monthly Rent	$77	$114.50
Median Value of Dwelling	$16,700	$11,300
Median Annual Income	$10,349	$7,723
Median School Year Completed	12.5 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 6
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Bobe Street
South	Wright; Barcelona
East	8th Avenue
West	Palafox Street

Other identification:

Total Population 5116 Non-White Population 4896 School Age Population 1980 Composite Index of Social Need 33.85 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 1

Selected Social & Economic Indices	*Census Tract* No. 6	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	37.67	17.88
(Number of Juvenile Delinquency Cases)	55	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	13.70	6.34
(Number of CINS Cases)	20	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	4.73%	1.05%
(Number of AFDC Cases)	242	xxxxxxxx
Percent of Homes Overcrowded[1]	8.7%	2.15%
(Number of Homes Overcrowded)	163	xxxxxxxx
Percent of Homes Dilapidated[1]	32.6%	3.5%
(Number of Homes Dilapidated)	610	xxxxxxxx
Percent of Homes Owner Occupied[1]	43.7%	63.8%
(Number of Homes Owner Occupied)	818	xxxxxxxx
Median Monthly Rent	$63	$114.50
Median Value of Dwelling	$7400	$11,300
Median Annual Income	$4248	$7,723
Median School Year Completed	9.2 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 7
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Gadsden; Belmont
South	Pensacola Bay
East	L & N RR
West	Tarragona

Other identification:

Total Population 3232 Non-White Population 1717 School Age population 961 Composite Index of Social Need 32.26 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 3

Selected Social & Economic Indices	*Census Tract* No. 7	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	59.31	17.88
(Number of Juvenile Delinquency Cases)	57	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	20.81	6.34
(Number of CINS Cases)	20	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	5.29%	1.05%
(Number of AFDC Cases)	171	xxxxxxxx
Percent of Homes Overcrowded[1]	5.0%	2.15%
(Number of Homes Overcrowded)	59	xxxxxxxx
Percent of Homes Dilapidated[1]	13.7%	3.5%
(Number of Homes Dilapidated)	160	xxxxxxxx
Percent of Homes Owner Occupied[1]	31.8%	63.8%
(Number of Homes Owner Occupied)	372	xxxxxxxx
Median Monthly Rent	$49	$114.50
Median Value of Dwelling	$7400	$11,300
Median Annual Income	$4117	$7,723
Median School Year Completed	8.8 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 8
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Baars
South	Belmont
East	17th Avenue
West	8th Avenue; 9th Avenue

Other identification:

Total Population 5601 Non-White Population 1295 School Age population 1048 Composite Index of Social Need 21.65 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 17

Selected Social & Economic Indices	*Census Tract* No. 8	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	25.76	17.88
(Number of Juvenile Delinquency Cases)	27	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	16.22	6.34
(Number of CINS Cases)	17	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	1.30%	1.05%
(Number of AFDC Cases)	73	xxxxxxxx
Percent of Homes Overcrowded[1]	1.2%	2.15%
(Number of Homes Overcrowded)	30	xxxxxxxx
Percent of Homes Dilapidated[1]	1.7%	3.5%
(Number of Homes Dilapidated)	42	xxxxxxxx
Percent of Homes Owner Occupied[1]	61.2%	63.8%
(Number of Homes Owner Occupied)	1475	xxxxxxxx
Median Monthly Rent	$91	$114.50
Median Value of Dwelling	$12,400	$11,300
Median Annual Income	$7,389	$7,723
Median School Year Completed	12.0 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 10
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Summit Blvd.
South	Escambia Bay
East	Escambia Bay
West	Bayou Texar

Other identification:

Total Population 7029 Non-White Population 1 School Age population 2011 Composite Index of Social Need 9.30 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 38

Selected Social & Economic Indices	*Census Tract* No. 10	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	11.44	17.88
(Number of Juvenile Delinquency Cases)	23	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	3.98	6.34
(Number of CINS Cases)	8	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.09%	1.05%
(Number of AFDC Cases)	6	xxxxxxxx
Percent of Homes Overcrowded[1]	0.6%	2.15%
(Number of Homes Overcrowded)	15	xxxxxxxx
Percent of Homes Dilapidated[1]	0.2%	3.5%
(Number of Homes Dilapidated)	5	xxxxxxxx
Percent of Homes Owner Occupied[1]	69.5%	63.8%
(Number of Homes Owner Occupied)	1624	xxxxxxxx
Median Monthly Rent	$172	$114.50
Median Value of Dwelling	$23,200	$11,300
Median Annual Income	$12,671	$7,723
Median School Year Completed	12.9 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 11
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Interstate Hwy. 10
South	Summit Blvd.
East	Escambia Bay
West	Lanier Dr; 9th Ave.; 17th Ave.

Other identification:

Total Population 8302 Non-White Population 0 School Age population 248 Composite Index of Social Need 11.23 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 36

Selected Social & Economic Indices	*Census Tract* No. 11	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	11.44	17.88
(Number of Juvenile Delinquency Cases)	23	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	3.98	6.34
(Number of CINS Cases)	8	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.09%	1.05%
(Number of AFDC Cases)	8	xxxxxxxx
Percent of Homes Overcrowded[1]	0.3%	2.15%
(Number of Homes Overcrowded)	8	xxxxxxxx
Percent of Homes Dilapidated[1]	0.8%	3.5%
(Number of Homes Dilapidated)	19	xxxxxxxx
Percent of Homes Owner Occupied[1]	83%	63.8%
(Number of Homes Owner Occupied)	2006	xxxxxxxx
Median Monthly Rent	$173	$114.50
Median Value of Dwelling	$19,000	$11,300
Median Annual Income	$11,709	$7,723
Median School Year Completed	12.8 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 12
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Interstate Hwy. 10
South	Royce; Carpenters Creek
East	Lanier; College Blvd.; 12th Ave.
West	Interstate Hwy. 10

Other identification:

Total Population 6782 Non-White Population 0 School Age population 1395 Composite Index of Social Need 12.35 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 34

Selected Social & Economic Indices	*Census Tract* No. 12	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	9.32	17.88
(Number of Juvenile Delinquency Cases)	13	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	4.30	6.34
(Number of CINS Cases)	6	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.23%	1.05%
(Number of AFDC Cases)	14	xxxxxxxx
Percent of Homes Overcrowded[1]	0.3%	2.15%
(Number of Homes Overcrowded)	6	xxxxxxxx
Percent of Homes Dilapidated[1]	1.0%	3.5%
(Number of Homes Dilapidated)	21	xxxxxxxx
Percent of Homes Owner Occupied[1]	62.5%	63.8%
(Number of Homes Owner Occupied)	1289	xxxxxxxx
Median Monthly Rent	$157	$114.50
Median Value of Dwelling	$15,500	$11,300
Median Annual Income	$9,597	$7,723
Median School Year Completed	12.3 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 13
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Royce
South	Baars
East	Carpenters Creek; Texar Dr; 18th Avenue
West	Interstate Hwy. 110; State Highway 291; 8th Avenue

Other identification:

Total Population 5854 Non-White Population 542 School Age population 1657 Composite Index of Social Need 15.11 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 31

Selected Social & Economic Indices	*Census Tract* No. 13	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	27.16	17.88
(Number of Juvenile Delinquency Cases)	45	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	6.64	6.34
(Number of CINS Cases)	11	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	1.89%	1.05%
(Number of AFDC Cases)	111	xxxxxxxx
Percent of Homes Overcrowded[1]	0.7%	2.15%
(Number of Homes Overcrowded)	12	xxxxxxxx
Percent of Homes Dilapidated[1]	0.7%	3.5%
(Number of Homes Dilapidated)	13	xxxxxxxx
Percent of Homes Owner Occupied[1]	82.5%	63.8%
(Number of Homes Owner Occupied)	1511	xxxxxxxx
Median Monthly Rent	$136	$114.50
Median Value of Dwelling	$16,000	$11,300
Median Annual Income	$11,147	$7,723
Median School Year Completed	12.5 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 14
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Interstate Hwy. #10
South	Michigan Ave; Palafox Highway
East	Interstate #110
West	S.L. & S.F. Rwy.

Other identification:

Total Population 6809 Non-White Population 1487 School Age population 2142 Composite Index of Social Need 25.00 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 12

Selected Social & Economic Indices	*Census Tract* No. 14	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	35.48	17.88
(Number of Juvenile Delinquency Cases)	76	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	9.80	6.34
(Number of CINS Cases)	21	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	3.04%	1.05%
(Number of AFDC Cases)	207	xxxxxxxx
Percent of Homes Overcrowded[1]	2.4%	2.15%
(Number of Homes Overcrowded)	49	xxxxxxxx
Percent of Homes Dilapidated[1]	3.9%	3.5%
(Number of Homes Dilapidated)	82	xxxxxxxx
Percent of Homes Owner Occupied[1]	68.7%	63.8%
(Number of Homes Owner Occupied)	1430	xxxxxxxx
Median Monthly Rent	$103	$114.50
Median Value of Dwelling	$12,300	$11,300
Median Annual Income	$7929	$7,723
Median School Year Completed	12 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 15
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Fairfield; State Highway 291
South	Bobe
East	8th Avenue, 9th Avenue
West	L & N R R

Other identification:

Total Population 3441 Non-White Population 3304 School Age population 1116 Composite Index of Social Need 3150 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 4

Selected Social & Economic Indices	*Census Tract* No. 15	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	27.78	17.88
(Number of Juvenile Delinquency Cases)	31	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	17.92	6.34
(Number of CINS Cases)	20	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	3.04%	1.05%
(Number of AFDC Cases)	207	xxxxxxxx
Percent of Homes Overcrowded[1]	9.5%	2.15%
(Number of Homes Overcrowded)	100	xxxxxxxx
Percent of Homes Dilapidated[1]	26.4%	3.5%
(Number of Homes Dilapidated)	277	xxxxxxxx
Percent of Homes Owner Occupied[1]	58.4%	63.8%
(Number of Homes Owner Occupied)	613	xxxxxxxx
Median Monthly Rent	$66	$114.50
Median Value of Dwelling	$5000	$11,300
Median Annual Income	$5055	$7,723
Median School Year Completed	8.6 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 16
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Pottery Plant Rd. (Fairfield Drive)
South	Bobe
East	L & N RR
West	"P" Street

Other identification:

Total Population 3540 Non-White Population 2911 School Age population 1191 Composite Index of Social Need 2785 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 6

Selected Social & Economic Indices	*Census Tract* No. 16	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	24.35	17.88
(Number of Juvenile Delinquency Cases)	29	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	5.88	6.34
(Number of CINS Cases)	7	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	4.38%	1.05%
(Number of AFDC Cases)	155	xxxxxxxx
Percent of Homes Overcrowded[1]	11.5%	2.15%
(Number of Homes Overcrowded)	108	xxxxxxxx
Percent of Homes Dilapidated[1]	32.9%	3.5%
(Number of Homes Dilapidated)	310	xxxxxxxx
Percent of Homes Owner Occupied[1]	54.9%	63.8%
(Number of Homes Owner Occupied)	517	xxxxxxxx
Median Monthly Rent	$62	$114.50
Median Value of Dwelling	$7000	$11,300
Median Annual Income	$5263	$7,723
Median School Year Completed	9 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 17
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Michigan Avenue
South	Fairfield Drive
East	Palafox Highway
West	S.L.S.F. R.R.

Other identification:

Total Population 4738 Non-White Population 1830 School Age population 1484 Composite Index of Social Need 27.85 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 7

Selected Social & Economic Indices	*Census Tract* No. 17	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	43.80	17.88
(Number of Juvenile Delinquency Cases)	65	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	2.02	6.34
(Number of CINS Cases)	3	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	3.90%	1.05%
(Number of AFDC Cases)	185	xxxxxxxx
Percent of Homes Overcrowded[1]	4.3%	2.15%
(Number of Homes Overcrowded)	62	xxxxxxxx
Percent of Homes Dilapidated[1]	9.6%	3.5%
(Number of Homes Dilapidated)	138	xxxxxxxx
Percent of Homes Owner Occupied[1]	58.9%	63.8%
(Number of Homes Owner Occupied)	847	xxxxxxxx
Median Monthly Rent	$70	$114.50
Median Value of Dwelling	$8100	$11,300
Median Annual Income	$5370	$7,723
Median School Year Completed	9.5 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 18
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Fairfield Drive
South	Avery
East	"P" Street
West	"W" Street

Other identification:

Total Population 4820 Non-White Population 484 School Age population 118 Composite Index of Social Need 25.54 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 11

Selected Social & Economic Indices	*Census Tract* No. 18	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	27.07	17.88
(Number of Juvenile Delinquency Cases)	32	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	12.69	6.34
(Number of CINS Cases)	15	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	1.85%	1.05%
(Number of AFDC Cases)	89	xxxxxxxx
Percent of Homes Overcrowded[1]	2.3%	2.15%
(Number of Homes Overcrowded)	40	xxxxxxxx
Percent of Homes Dilapidated[1]	6.0%	3.5%
(Number of Homes Dilapidated)	105	xxxxxxxx
Percent of Homes Owner Occupied[1]	63.8%	63.8%
(Number of Homes Owner Occupied)	1125	xxxxxxxx
Median Monthly Rent	$87	$114.50
Median Value of Dwelling	$7700	$11,300
Median Annual Income	$6460	$7,723
Median School Year Completed	9 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 19
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North Avery

South Mobile Hwy; Gadsden

East "P" St.

West Kirk Street

Other identification:

Total Population 3037 Non-White Population 0 School Age population 661 Composite Index of Social Need 19.03 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 24

Selected Social & Economic Indices	*Census Tract* No. 19	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	21.18	17.88
(Number of Juvenile Delinquency Cases)	14	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	15.13	6.34
(Number of CINS Cases)	10	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	1.12%	1.05%
(Number of AFDC Cases)	34	XXXXXXXX
Percent of Homes Overcrowded[1]	2.0%	2.15%
(Number of Homes Overcrowded)	24	XXXXXXXX
Percent of Homes Dilapidated[1]	1.8%	3.5%
(Number of Homes Dilapidated)	22	XXXXXXXX
Percent of Homes Owner Occupied[1]	60.0%	63.8%
(Number of Homes Owner Occupied)	718	XXXXXXXX
Median Monthly Rent	$93	$114.50
Median Value of Dwelling	$8200	$11,300
Median Annual Income	$7314	$7,723
Median School Year Completed	10.0 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 20
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Fairfield Drive
South	Avery; Kirk
East	"W" Street
West	Mobile Highway; State Highway #10

Other identification:

Total Population 3471 Non-White Population 1137 School Age population 981 Composite Index of Social Need 26.30 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 9

Selected Social & Economic Indices	*Census Tract* No. 20	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	50.97	17.88
(Number of Juvenile Delinquency Cases)	50	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	19.37	6.34
(Number of CINS Cases)	19	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	2.33%	1.05%
(Number of AFDC Cases)	81	xxxxxxxx
Percent of Homes Overcrowded[1]	3.7%	2.15%
(Number of Homes Overcrowded)	44	xxxxxxxx
Percent of Homes Dilapidated[1]	11.1%	3.5%
(Number of Homes Dilapidated)	133	xxxxxxxx
Percent of Homes Owner Occupied[1]	61.9%	63.8%
(Number of Homes Owner Occupied)	738	xxxxxxxx
Median Monthly Rent	$90	$114.50
Median Value of Dwelling	$8700	$11,300
Median Annual Income	$6569	$7,723
Median School Year Completed	9.2 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 21
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North — Mobile Hwy. (State Hwy. #10A)

South — Jones Swamp; Bayou Chico

East — Bayou Chico

West — Warrington Rd., Corry Road

Other identification:

Total Population 6720 Non-White Population 49 School Age population 1519 Composite Index of Social Need 20.77 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 18

Selected Social & Economic Indices	*Census Tract* No. 21	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	16.46	17.88
(Number of Juvenile Delinquency Cases)	25	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	17.12	6.34
(Number of CINS Cases)	26	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	1.20%	1.05%
(Number of AFDC Cases)	81	xxxxxxxx
Percent of Homes Overcrowded[1]	.8%	2.15%
(Number of Homes Overcrowded)	21	xxxxxxxx
Percent of Homes Dilapidated[1]	1.2%	3.5%
(Number of Homes Dilapidated)	30	xxxxxxxx
Percent of Homes Owner Occupied[1]	57.5%	63.8%
(Number of Homes Owner Occupied)	1465	xxxxxxxx
Median Monthly Rent	$109	$114.50
Median Value of Dwelling	$10,900	$11,300
Median Annual Income	$7,364	$7,723
Median School Year Completed	11.8 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 22
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Gulf of Mexico
South	Gulf of Mexico
East	State Hwy. #291
West	Gulf of Mexico

Other identification:

Total Population 6684 Non-White Population 326 School Age population 1649 Composite Index of Social Need 22.50 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 15

Selected Social & Economic Indices	*Census Tract* No. 22	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	24.30	17.88
(Number of Juvenile Delinquency Cases)	40	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	7.29	6.34
(Number of CINS Cases)	12	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.71%	1.05%
(Number of AFDC Cases)	72	xxxxxxxx
Percent of Homes Overcrowded[1]	6.1%	2.15%
(Number of Homes Overcrowded)	117	xxxxxxxx
Percent of Homes Dilapidated[1]	10.4%	3.5%
(Number of Homes Dilapidated)	.99	xxxxxxxx
Percent of Homes Owner Occupied[1]	81.7%	63.8%
(Number of Homes Owner Occupied)	1566	xxxxxxxx
Median Monthly Rent	$70	$114.50
Median Value of Dwelling	$11,200	$11,300
Median Annual Income	$6,935	$7,723
Median School Year Completed	12.2 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 23
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Pensacola Bay
South	Gulf of Mexico
East	Escambia Bay
West	Barrancas Avenue

Other identification:

Total Population 6861 Non-White Population 274 School Age population 1389 Composite Index of Social Need 17.80 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 27

970

Selected Social & Economic Indices	*Census Tract* No. 23	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	13.68	17.88
(Number of Juvenile Delinquency Cases)	19	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	12.24	6.34
(Number of CINS Cases)	17	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.71%	1.05%
(Number of AFDC Cases)	49	xxxxxxxx
Percent of Homes Overcrowded[1]	0.8%	2.15%
(Number of Homes Overcrowded)	25	xxxxxxxx
Percent of Homes Dilapidated[1]	0.8%	3.5%
(Number of Homes Dilapidated)	22	xxxxxxxx
Percent of Homes Owner Occupied[1]	55.7%	63.8%
(Number of Homes Owner Occupied)	1501	xxxxxxxx
Median Monthly Rent	$114	$114.50
Median Value of Dwelling	$13,000	$11,300
Median Annual Income	$8,750	$7,723
Median School Year Completed	12.5 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 24
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North Barrancas Avenue
South Gulf of Mexico
East Gulf of Mexico
West Warrington Road

Other identification: US Naval Air Station

Total Population 4816 Non-White Population 194 School Age population 766 Composite Index of Social Need 11.85 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 35

Selected Social & Economic Indices	*Census Tract* No. 24	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	1.31	17.88
(Number of Juvenile Delinquency Cases)	1	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	1.31	6.34
(Number of CINS Cases)	1	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	-	1.05%
(Number of AFDC Cases)	-	xxxxxxxx
Percent of Homes Overcrowded[1]	2.0%	2.15%
(Number of Homes Overcrowded)	9	xxxxxxxx
Percent of Homes Dilapidated[1]	-	3.5%
(Number of Homes Dilapidated)	-	xxxxxxxx
Percent of Homes Owner Occupied[1]	-	63.8%
(Number of Homes Owner Occupied)	-	xxxxxxxx
Median Monthly Rent	$107	$114.50
Median Value of Dwelling	-	$11,300
Median Annual Income	$7929	$7,723
Median School Year Completed	12.9 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 25
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Pensacola Bay
South	Gulf of Mexico
East	Gulf of Mexico
West	Gulf of Mexico

Other identification: Pensacola Beach

Total Population 1005 Non-White Population 1 School Age population 161 Composite Index of Social Need 6.04 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 40

Selected Social & Economic Indices	*Census Tract* No. 25	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	-	17.88
(Number of Juvenile Delinquency Cases)	None	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	-	6.34
(Number of CINS Cases)	None	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.29%	1.05%
(Number of AFDC Cases)	3	xxxxxxxx
Percent of Homes Overcrowded[1]	0.3%	2.15%
(Number of Homes Overcrowded)	2	xxxxxxxx
Percent of Homes Dilapidated[1]	0.6%	3.5%
(Number of Homes Dilapidated)	4	xxxxxxxx
Percent of Homes Owner Occupied[1]	25.2%	63.8%
(Number of Homes Owner Occupied)	160	xxxxxxxx
Median Monthly Rent	$147	$114.50
Median Value of Dwelling	$18,500	$11,300
Median Annual Income	$11,846	$7,723
Median School Year Completed	13 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 26
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North Gulf of Mexico
South Gulf of Mexico
East State Highway 291
West Gulf of Mexico

Other identification:

Total Population 2547 Non-White Population 15 School Age population 68 Composite Index of Social Need 9.54 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 37

Selected Social & Economic Indices	*Census Tract* No. 26	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	1.45	17.88
(Number of Juvenile Delinquency Cases)	1	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	0	6.34
(Number of CINS Cases)	0	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.75%	1.05%
(Number of AFDC Cases)	19	xxxxxxxx
Percent of Homes Overcrowded[1]	1.0%	2.15%
(Number of Homes Overcrowded)	10	xxxxxxxx
Percent of Homes Dilapidated[1]	2.1%	3.5%
(Number of Homes Dilapidated)	21	xxxxxxxx
Percent of Homes Owner Occupied[1]	63.9%	63.8%
(Number of Homes Owner Occupied)	633	xxxxxxxx
Median Monthly Rent	$114	$114.50
Median Value of Dwelling	$14,500	$11,300
Median Annual Income	$8,941	$7,723
Median School Year Completed	12.2 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 27
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Lillian Hwy.
South	Barrancas Ave.
East	State Hwy. 298 A
West	State Hwy. 291

Other identification:

Total Population 3968 Non-White Population 905 School Age population 110 Composite Index of Social Need 20.35 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 19

Selected Social & Economic Indices	*Census Tract* No. 27	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	25.25	17.88
(Number of Juvenile Delinquency Cases)	28	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	4.51	6.34
(Number of CINS Cases)	5	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.35%	1.05%
(Number of AFDC Cases)	14	xxxxxxxx
Percent of Homes Overcrowded[1]	2.1%	2.15%
(Number of Homes Overcrowded)	29	xxxxxxxx
Percent of Homes Dilapidated[1]	8.9%	3.5%
(Number of Homes Dilapidated)	121	xxxxxxxx
Percent of Homes Owner Occupied[1]	62.5%	63.8%
(Number of Homes Owner Occupied)	850	xxxxxxxx
Median Monthly Rent	$93	$114.50
Median Value of Dwelling	$8000	$11,300
Median Annual Income	$6542	$7,723
Median School Year Completed	11.0 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 28
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Fairfield; Jackson
South	Jones Swamp
East	61st Avenue, New Warrington Rd.
West	State Hwy. 298 A

Other identification:

Total Population 8413 Non-White Population 60 School Age population 200 Composite Index of Social Need 13.73 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 32

Selected Social & Economic Indices	*Census Tract* No. 28	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	15.43	17.88
(Number of Juvenile Delinquency Cases)	31	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	9.46	6.34
(Number of CINS Cases)	19	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.18%	1.05%
(Number of AFDC Cases)	15	xxxxxxxx
Percent of Homes Overcrowded[1]	0.7%	2.15%
(Number of Homes Overcrowded)	15	xxxxxxxx
Percent of Homes Dilapidated[1]	0.6%	3.5%
(Number of Homes Dilapidated)	13	xxxxxxxx
Percent of Homes Owner Occupied[1]	77.7%	63.8%
(Number of Homes Owner Occupied)	1610	xxxxxxxx
Median Monthly Rent	$136	$114.50
Median Value of Dwelling	$15,200	$11,300
Median Annual Income	$9801	$7,723
Median School Year Completed	12.4 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 29
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Fairfield Drive
South	Jackson
East	Mobile Hwy; New Warrington Rd.
West	61st Street

Other identification:

Total Population 5575 Non-White Population 9 School Age population 160 Composite Index of Social Need 15.80 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 30

Selected Social & Economic Indices	*Census Tract* No. 29	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	16.85	17.88
(Number of Juvenile Delinquency Cases)	27	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	8.11	6.34
(Number of CINS Cases)	13	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.84%	1.05%
(Number of AFDC Cases)	47	xxxxxxxx
Percent of Homes Overcrowded[1]	1.0%	2.15%
(Number of Homes Overcrowded)	18	xxxxxxxx
Percent of Homes Dilapidated[1]	0.2%	3.5%
(Number of Homes Dilapidated)	3	xxxxxxxx
Percent of Homes Owner Occupied[1]	72.8%	63.8%
(Number of Homes Owner Occupied)	1260	xxxxxxxx
Median Monthly Rent	$118	$114.50
Median Value of Dwelling	$11,400	$11,300
Median Annual Income	$8,488	$7,723
Median School Year Completed	12.1 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 30
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Bellshead Brook
South	Fairfield Dr.
East	Bellshead Brook
West	Bayou Marcus

Other identification:

Total Population 6753 Non-White Population 2113 School Age population 200 Composite Index of Social Need 16.50 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 29

Selected Social & Economic Indices	*Census Tract* No. 30	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	13.72	17.88
(Number of Juvenile Delinquency Cases)	29	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	11.83	6.34
(Number of CINS Cases)	25	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.69%	1.05%
(Number of AFDC Cases)	47	xxxxxxxx
Percent of Homes Overcrowded[1]	1.1%	2.15%
(Number of Homes Overcrowded)	22	xxxxxxxx
Percent of Homes Dilapidated[1]	1.7%	3.5%
(Number of Homes Dilapidated)	35	xxxxxxxx
Percent of Homes Owner Occupied[1]	75.3%	63.8%
(Number of Homes Owner Occupied)	1513	xxxxxxxx
Median Monthly Rent	$131	$114.50
Median Value of Dwelling	$15,800	$11,300
Median Annual Income	$9,402	$7,723
Median School Year Completed	12.3 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 31
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Michigan Avenue
South	Bellshead Brook
East	S.L. & S.F. R.R.
West	Bayou Marcus

Other identification:

Total Population 4886 Non-White Population 54 School Age population 1577 Composite Index of Social Need 12.80 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 33

Selected Social & Economic Indices	*Census Tract* No. 31	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	12.68	17.88
(Number of Juvenile Delinquency Cases)	20	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	5.71	6.34
(Number of CINS Cases)	9	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.25%	1.05%
(Number of AFDC Cases)	12	xxxxxxxx
Percent of Homes Overcrowded[1]	0.4%	2.15%
(Number of Homes Overcrowded)	6	xxxxxxxx
Percent of Homes Dilapidated[1]	1.0%	3.5%
(Number of Homes Dilapidated)	14	xxxxxxxx
Percent of Homes Owner Occupied[1]	85.6%	63.8%
(Number of Homes Owner Occupied)	1151	xxxxxxxx
Median Monthly Rent	$162	$114.50
Median Value of Dwelling	$13,300	$11,300
Median Annual Income	$9,405	$7,723
Median School Year Completed	12.4 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 32
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Detroit Blvd.
South	Ark. Road; Michigan Avenue
East	S.L.S.F. R.R.
West	Pine Forest Road

Other identification:

Total Population 7340 Non-White Population 3421 School Age Population 2616 Composite Index of Social Need 25.77 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 10

Selected Social & Economic Indices	*Census Tract* No. 32	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	21.79	17.88
(Number of Juvenile Delinquency Cases)	57	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	4.59	6.34
(Number of CINS Cases)	12	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	3.21%	1.05%
(Number of AFDC Cases)	236	xxxxxxxx
Percent of Homes Overcrowded[1]	6.1%	2.15%
(Number of Homes Overcrowded)	117	xxxxxxxx
Percent of Homes Dilapidated[1]	10.4%	3.5%
(Number of Homes Dilapidated)	199	xxxxxxxx
Percent of Homes Owner Occupied[1]	81.7%	63.8%
(Number of Homes Owner Occupied)	1566	xxxxxxxx
Median Monthly Rent	$104	$114.50
Median Value of Dwelling	$12,300	$11,300
Median Annual Income	$7,448	$7,723
Median School Year Completed	11.9 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 33
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North Interstate Hwy. #10
South Lillian Hwy.
East Arkansas Creek
West Pine Forest Road

Other identification:

Total Population 7841 Non-White Population 30 School Age population 2416 Composite Index of Social Need 19.96 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 22

Selected Social & Economic Indices	*Census Tract* No. 33	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	9.52	17.88
(Number of Juvenile Delinquency Cases)	23	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	12.00	6.34
(Number of CINS Cases)	29	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.93%	1.05%
(Number of AFDC Cases)	73	xxxxxxxx
Percent of Homes Overcrowded[1]	1.6%	2.15%
(Number of Homes Overcrowded)	37	xxxxxxxx
Percent of Homes Dilapidated[1]	3.0%	3.5%
(Number of Homes Dilapidated)	72	xxxxxxxx
Percent of Homes Owner Occupied[1]	79.2%	63.8%
(Number of Homes Owner Occupied)	1880	xxxxxxxx
Median Monthly Rent	$119	$114.50
Median Value of Dwelling	$11,900	$11,300
Median Annual Income	$8,589	$7,723
Median School Year Completed	11.7 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 34
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	State Hwy. #10
South	Detroit Blvd.
East	L. & N.RR
West	Interstate Hwy. #10

Other identification:

Total Population 4489 Non-White Population 554 School Age population 1310 Composite Index of Social Need 17.30 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 28

Selected Social & Economic Indices	*Census Tract* No. 34	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	4.46	17.88
(Number of Juvenile Delinquency Cases)	20	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	6.11	6.34
(Number of CINS Cases)	8	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.56%	1.05%
(Number of AFDC Cases)	25	xxxxxxxx
Percent of Homes Overcrowded[1]	2.3%	2.15%
(Number of Homes Overcrowded)	32	xxxxxxxx
Percent of Homes Dilapidated[1]	2.7%	3.5%
(Number of Homes Dilapidated)	38	xxxxxxxx
Percent of Homes Owner Occupied[1]	76.7%	63.8%
(Number of Homes Owner Occupied)	1069	xxxxxxxx
Median Monthly Rent	$89	$114.50
Median Value of Dwelling	$11,100	$11,300
Median Annual Income	$8,165	$7,723
Median School Year Completed	11.6 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 35
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	State Hwy. #10
South	Detroit Blvd.
East	Gulf of Mexico
West	L & N R R

Other identification:

Total Population 10,121 Non-White Population 1108 School Age population 2658 Composite Index of Social Need 20.11 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 20

Selected Social & Economic Indices	*Census Tract* No. 35	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	4.89	17.88
(Number of Juvenile Delinquency Cases)	13	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	3.39	6.34
(Number of CINS Cases)	9	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	1.07%	1.05%
(Number of AFDC Cases)	109	xxxxxxxx
Percent of Homes Overcrowded[1]	2.2%	2.15%
(Number of Homes Overcrowded)	58	xxxxxxxx
Percent of Homes Dilapidated[1]	7.1%	3.5%
(Number of Homes Dilapidated)	188	xxxxxxxx
Percent of Homes Owner Occupied[1]	78.1%	63.8%
(Number of Homes Owner Occupied)	2058	xxxxxxxx
Median Monthly Rent	$115	$114.50
Median Value of Dwelling	$14,300	$11,300
Median Annual Income	$7,924	$7,723
Median School Year Completed	12.1 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 36
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	State Highway #196
South	Eleven Mile Creek
East	Escambia River
West	Perdido River

Other identification:

Total Population 9466 Non-White Population 419 School Age population 2843 Composite Index of Social Need 18.80 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 26

966

Selected Social & Economic Indices	*Census Tract* No. 36	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	2.46	17.88
(Number of Juvenile Delinquency Cases)	7	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	2.81	6.34
(Number of CINS Cases)	8	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	2.40%	1.05%
(Number of AFDC Cases)	228	xxxxxxxx
Percent of Homes Overcrowded[1]	1.9%	2.15%
(Number of Homes Overcrowded)	51	xxxxxxxx
Percent of Homes Dilapidated[1]	4.5%	3.5%
(Number of Homes Dilapidated)	118	xxxxxxxx
Percent of Homes Owner Occupied[1]	81.8%	63.8%
(Number of Homes Owner Occupied)	2151	xxxxxxxx
Median Monthly Rent	$101	$114.50
Median Value of Dwelling	$13,600	$11,300
Median Annual Income	$9,239	$7,723
Median School Year Completed	11.7 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 37
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North De Galvez Rd.
South Kingsfield Rd.
East State Highway 95
West State Highway 97

Other identification:

Total Population 3967 Non-White Population 1419 School Age population 1291 Composite Index of Social Need 19.50 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 23

Selected Social & Economic Indices	*Census Tract* No. 37	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	0.0	17.88
(Number of Juvenile Delinquency Cases)	0.0	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	0.0	6.34
(Number of CINS Cases)	0.0	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.07%	1.05%
(Number of AFDC Cases)	3	xxxxxxxx
Percent of Homes Overcrowded[1]	7.1%	2.15%
(Number of Homes Overcrowded)	75	xxxxxxxx
Percent of Homes Dilapidated[1]	17.3%	3.5%
(Number of Homes Dilapidated)	184	xxxxxxxx
Percent of Homes Owner Occupied[1]	76.7%	63.8%
(Number of Homes Owner Occupied)	815	xxxxxxxx
Median Monthly Rent	$64	$114.50
Median Value of Dwelling	$8300	$11,300
Median Annual Income	$8089	$7,723
Median School Year Completed	11.3 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 38
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Escambia County (Fla.); Escambia County (Ala.)
South	State Hwy. 196
East	State Hwy. 97
West	Escambia County Baldwin County, Ala.

Other identification:

Total Population 2879 Non-White Population 458 School Age population 861 Composite Index of Social Need 20.00 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 21

1000

Selected Social & Economic Indices	*Census Tract* No. 38	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	0.0	17.88
(Number of Juvenile Delinquency Cases)	0.0	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	0.0	6.34
(Number of CINS Cases)	0.0	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	-	1.05%
(Number of AFDC Cases)	-	xxxxxxxx
Percent of Homes Overcrowded[1]	3.2%	2.15%
(Number of Homes Overcrowded)	29	xxxxxxxx
Percent of Homes Dilapidated[1]	18.2%	3.5%
(Number of Homes Dilapidated)	167	xxxxxxxx
Percent of Homes Owner Occupied[1]	76.5%	63.8%
(Number of Homes Owner Occupied)	702	xxxxxxxx
Median Monthly Rent	$67	$114.50
Median Value of Dwelling	$6700	$11,300
Median Annual Income	$7292	$7,723
Median School Year Completed	8.9 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 39
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North	Escambia County (Fla.); Escambia County (Ala.)
South	State Hwy. #184
East	Escambia County Line
West	State Highway #97

Other identification:

Total Population 3814 Non-White Population 537 School Age population 1170 Composite Index of Social Need 22.88 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 13

Selected Social & Economic Indices	*Census Tract* No. 39	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	4.27	17.88
(Number of Juvenile Delinquency Cases)	5	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	4.27	6.34
(Number of CINS Cases)	5	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	0.96%	1.05%
(Number of AFDC Cases)	37	xxxxxxxx
Percent of Homes Overcrowded[1]	3.4%	2.15%
(Number of Homes Overcrowded)	41	xxxxxxxx
Percent of Homes Dilapidated[1]	21.4%	3.5%
(Number of Homes Dilapidated)	258	xxxxxxxx
Percent of Homes Owner Occupied[1]	77.1%	63.8%
(Number of Homes Owner Occupied)	931	xxxxxxxx
Median Monthly Rent	$55	$114.50
Median Value of Dwelling	$6100	$11,300
Median Annual Income	$7167	$7,723
Median School Year Completed	9.7 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

SOCIO-ECONOMIC DATA FOR CENSUS TRACT 40
(ESCAMBIA COUNTY)

Boundary Description: (Key streets listed below)

North Escambia County (Fla.); Escambia County (Ala.)

South Canoe Creek

East Escambia County Line

West Canoe Creek

Other identification:

Total Population 4201 Non-White Population 1484 School Age population 1300 Composite Index of Social Need 27.15 Median Average for County 20.55 Rank among 40 Census Tracts by Highest Incidence of Social Need 8

1004

Selected Social & Economic Indices	*Census Tract* No. 40	*Median Average for All Census Tracts*
Juvenile Delinquency Rates per 1000 School Age Population of Census Tract	8.46	17.88
(Number of Juvenile Delinquency Cases)	11	xxxxxxxx
Children in Need of Supervision Rate Per 1000 School Age Population of Census Tract	3.08	6.34
(Number of CINS Cases)	4	xxxxxxxx

Selected Social & Economic Indices	*Census Tract*	*Median Average for All Census Tracts*
Percent of Cases on Aid to Families with Dependent Children by Census Tract Population	2.66%	1.05%
(Number of AFDC Cases)	112	xxxxxxxx
Percent of Homes Overcrowded[1]	4.4%	2.15%
(Number of Homes Overcrowded)	59	xxxxxxxx
Percent of Homes Dilapidated[1]	31.9%	3.5%
(Number of Homes Dilapidated)	427	xxxxxxxx
Percent of Homes Owner Occupied[1]	70.1%	63.8%
(Number of Homes Owner Occupied)	939	xxxxxxxx
Median Monthly Rent	$45	$114.50 $58
Median Value of Dwelling	$5000	$11,300
Median Annual Income	$5091	$7,723
Median School Year Completed	9 yrs.	11.8 yrs.

[1]Percent based on total dwellings in Census Tract.

EXHIBIT 23 Excerpt

STATISTICAL PROFILE OF PENSACOLA AND THE SMSA

JULY, 1974

PENSACOLA, FLORIDA

I. GENERAL

Pensacola is the central city of the Pensacola Standard Metropolitan Statistical Area. An SMSA, in general, is a county or a set of contiguous counties with one or more "central" cities of 50,000 or more inhabitants. The City of Pensacola includes 24.1 square miles within its corporate limits.

II. POPULATION

In April, 1970, there were 59,571 persons living in Pensacola. This number reflects the population enumerated during the 1970 census of population and housing. The City's population represented 24.5 percent of the total population of 243,075 in the SMSA.

Appendix A

Age Distribution of the Population for the City and SMSA (as of 4-1-1970)

	The City		The SMSA	
	Number	Percent	Number	Percent
All Races				
Total	59,571	100.0	243,075	100.0
Under 18 Years	20,649	34.7	88,117	36.3
Under 6 Years	5,839	9.8	26,153	10.8
6 to 13 Years	9,882	16.6	42,038	17.3
14 to 17 Years	4,928	8.3	19,926	8.2
18 Years and Over	38,922	65.3	154,958	63.7
18 to 20 Years	3,094	5.2	15,932	6.6
21 Years and Over	35,828	60.1	139,026	57.2
21 to 24 Years	3,891	6.5	21,850	9.0
25 to 34 Years	6,860	11.5	31,343	12.9
35 to 44 Years	6,594	11.1	27,408	11.3
45 to 54 Years	7,019	11.8	25,056	10.3
55 to 64 Years	5,747	9.6	18,004	7.4
65 Years and Over	5,717	9.6	15,365	6.3
Median Age	28.1	–	24.2	–

	The City		The SMSA	
	Number	Percent	Number	Percent
White				
Total	39,648	100.0	198,425	100.0
Under 18 Years	12,271	30.9	67,726	34.1
Under 6 Years	3,616	9.1	20.435	10.3
6 to 13 Years	5,597	14.1	31,937	16.1
14 to 17 Years	3,058	7.7	15,354	7.7
18 Years and Over	27,377	69.1	130,699	65.9
18 to 20 Years	2,022	5.1	13,343	6.7
21 Years and Over	25,355	64.0	117,356	59.1
21 to 24 Years	2,947	7.4	19,553	9.9
25 to 34 Years	4,819	12.2	26,589	13.4
35 to 44 Years	4,505	11.4	22,605	11.4
45 to 54 Years	4,940	12.5	21,040	10.6
55 to 64 Years	4,009	10.1	14,917	7.5
65 Years and Over	4,135	10.4	12,652	6.4
Median Age	30.4	–	24.7	–

	The City		The SMSA	
	Number	Percent	Number	Percent
Negro				
Total	19,674	100.0	42,309	100.0
Under 18 Years	8,272	42.0	19,506	46.1
Under 6 Years	2,195	11.2	5,308	12.5
6 to 13 Years	4,239	21.5	9,747	23.0
14 to 17 Years	1,838	9.3	4,451	10.5
18 Years and Over	11,402	58.0	22,803	53.9
18 to 20 Years	1,057	5.4	2,472	5.8
21 Years and Over	10,345	52.6	20,331	48.1
21 to 24 Years	911	4.6	2,031	4.8
25 to 34 Years	2,030	10.3	4,224	10.0
35 to 44 Years	2,047	10.4	4,464	10.6
45 to 54 Years	2,056	10.5	3,915	9.3
55 to 64 Years	1,733	8.8	3,048	7.2
65 Years and Over	1,568	8.0	2,649	6.3
Median Age	23.3	–	20.0	–

III. HOUSING

Type of Structure

In Pensacola, 83.0 percent of the 19,326 occupied housing units were single unit structures, compared to 83.2 percent for the SMSA as a whole.

Another, 8.7 percent of the occupied housing units were in 2-unit, 3-unit, or 4-unit structures, while 7.8 percent were in apartment buildings with five or more units. Mobile homes and trailers accounted for 0.5 percent of the occupied housing units in the City.

Of the 1,721 vacant year-round housing units in Pensacola, 59.3 percent were single unit structures, 18.3 percent were in 2-unit, 3-unit, or 4-unit structures, and 22.4 percent were in apartment buildings with five units or more.

Year Structure Built

Structures built in 1960 or later number 4,588, or 23.7 percent of the City's occupied housing units. The comparable SMSA figure was 34.78 percent. Housing units built before 1940 represented 36.1 percent of the City's occupied units. The comparable figure for the SMSA was 18.67 percent.

Year Structure Built for Occupied Units
For the City and SMSA

	City		SMSA	
	Number	Percent	Number	Percent
Occupied Units	19,326	100.0	71,233	100.0
1965 to March 1970	2,330	12.1	13,240	18.6
1960 to 1964	2,258	11.7	11,494	16.1
1950 to 1959	4,210	21.8	20,806	29.2
1940 to 1949	3,549	18.4	12,442	17.5
1939 or Earlier	6,979	36.1	13,251	18.6

Value of Owner Occupied Units

The median value of specific owner occupied housing units in the City was $4,451, as compared to $12,393 for the SMSA.

Value of Specified Owner Occupied Units
for the City and the SMSA

	City		SMSA	
	Number	Percent	Number	Percent
Specified Owner Occupied ..	11,836	100.0	42,981	100.0
Less than $5,000	929	7.8	4,442	10.3
$5,000 to $7,499	1,277	10.8	5,481	12.8
$7,500 to $9,999	1,234	10.4	5,741	13.4
$10,000 to $14,999	2,784	23.5	12,171	28.3
$15,000 to 19,999	2,282	19.3	7,118	16.8
$20,000 to $24,999	1,419	12.0	3,532	8.2
$25,000 to $34,999	1,183	10.0	2,887	6.7
$35,000 to $49,999	531	4.5	1,161	2.7
$50,000 or more	197	1.7	448	1.0
Median Value	14,451	–	12,393	–

Gross Rent of Renter Occupied Units

The median gross rent of specified renter occupied housing units in the city was $77. Gross rent is the monthly rent plus the average cost of utilities and fuel. For the SMSA as a whole, the median gross rent was $94.

Gross Rent of Specified Renter Occupied
Units, City and SMSA

	Number	Percent	Number	Percent
Specified Renter Occupied ..	6,147	100.0	17,978	100.0
Less than $60	1,817	29.6	3,631	20.2
$60 to $79	1,446	23.5	3,280	18.2
$80 to $99	847	13.8	3,036	16.9
100 to $149	875	14.2	4,571	25.4
$150 to $199	908	14.8	2,721	15.1
$200 to $299	242	3.9	706	3.9
$300 or More	12	0.2	33	0.2
Median Gross Rent	77	–	94	–

Tenure & Vacancy Status of Housing Units, City & SMSA

	City -21,055	SMSA - 77,292
All Housing Units		
All Year-Round Housing Units	21,047	77,164
All Occupied Units	19,326	71,233
Owner-Occupied	12,642	50,457
Percent of All Occupied	65.4	70.8
Renter Occupied	6,684	20,776
Vacant - For Sale or Rent	1,192	3,720
Other Vacant	529	2,211

Negroes occupied 5,660 of the housing units in the City, about 50.9 percent of the housing units in which negroes lived were owner-occupied and 49.1 percent were renter-occupied.

NUMBER OF BUILDING PERMITS ISSUED BY MONTH AND YEAR

Year	January	February	March	April	May	June	July	August	Sept.	October	Nov.	Dec.	Totals Yr.
1974	129	120	146	100	169	–	–	–	–	–	–	–	664
1973	64	106	162	137	188	124	146	112	78	115	99	64	1,395
1972	126	124	160	104	120	105	92	100	108	116	87	78	1,320
1971	88	91	153	138	107	149	162	116	93	109	91	75	1,372
1970	87	87	116	103	95	85	79	70	102	102	56	97	1,079
1969	75	101	98	127	119	107	78	93	83	112	67	66	1,126
1968	59	86	95	93	118	91	110	89	85	73	64	57	1,020
1967	40	54	86	79	73	84	74	91	105	108	87	64	945
1966	33	24	39	18	43	58	62	72	60	55	49	37	550
1965	32	34	49	37	51	62	44	24	34	24	34	28	453
1964	31	51	50	40	31	32	56	21	47	22	21	50	452
1963	–	44	35	38	53	18	60	40	32	48	27	37	432
Tot. 12 Yrs.	764	922	1,189	1,014	1,167	915	963	828	827	884	682	653	10,808

IV. INCOME

Of the 15,109 families in Pensacola, 2,581, or 17.1 percent, had 1969 incomes which were below the low-income (poverty) level. For the SMSA, 15.5 percent of all families were below the low-income level. Families with a woman as head comprised 51.1 percent of the low-income families in Pensacola.

There was a total of 12,981 persons below the low-income level in the City in 1969. Of these, 8,919 or 68.7 percent were negroes. Persons below the low-income level represented 21.9 percent of all persons in the City, compared to 18.7 percent for the SMSA. In the City, 82.0 percent of these persons were members of families, while the remainder were unrelated individuals. Children under 18 years of age represented 43.7 percent of all persons below the low-income level, while persons 65 years and over comprised 14.7 percent of the City's low-income population. For the SMSA, the comparable figures were 44.4 percent and 12.7 percent, respectively.

Persons Below the Low-Income Level in 1969,
by Family Status
For the City and the SMSA

	City		SMSA	
	Number Below Low-Inc. Level	Percent Below Low-Inc. Level	Number Below Low-Inc. Level	Percent Below Low-Inc. Level
All Persons	12,981	21.9	43,543	18.7
65 Years & Over	1,906	34.0	5,530	36.9
In Families	10,640	19.7	37,530	17.1
Family Heads	2,581	17.1	9,409	15.5
Male	1,261	10.2	5,841	11.0
Female	1,320	47.3	3,568	46.3
Related Chn. Under 18	5,671	27.7	19,339	22.2
Other Family Members	2,388	13.0	8,782	12.3
Unrelated Individuals	2,341	44.6	6,013	43.9

The median income in 1969 of families in Pensacola was $8,305. This means that one-half of the families in the City had incomes below this value and one-half had incomes above this value. The comparable figure for the SMSA was $7,971. The median income for negro families in the City was $4,508.

Families with income less than $5,000 were 28.6 percent of all families in the City, while families with income of $15,000 or more constituted 1.7 percent of the families. Thus, 54.7 percent of the families had incomes between $5,000 and $15,000. The table below shows comparable data for Pensacola and the SMSA as a whole.

Distribution of Family Income in 1969

	City		SMSA	
	Number	Percent	Number	Percent
All Families	15,109	100.0	60,658	100.0
Less than $3,000	2,349	15.5	8,368	13.8
$3,000 to $4,999	1,970	13.0	7,855	12.9
$5,000 to $6,999	1,963	13.0	9,551	15.7
$7,000 to $9,999	2,866	19.0	13,762	22.7
$10,000 to $14,999	3,439	22.8	13,776	22.7
$15,000 to $24,999	1,957	13.0	6,010	9.9
$25,000 or More	565	3.7	1,336	2.2
Median Income	8,305	–	7,971	–

The median income for unrelated individuals in the City was $2,113 as compared to $2,048 for all unrelated individuals in the SMSA.

On a per capita income basis, every man, woman and child in the City averaged $2,759. The per capita income throughout the SMSA was $2,525.

V. MAJOR INDUSTRIES

In Pensacola there were more persons employed in professional and related services that in any other industrial category. The second and third largest industries were wholesale and retail trade and manufacturing, respectively. The complete list of major industrial groups is shown below.

Industry of the Employed, for City and SMSA

	City		SMSA	
	Number	Percent	Number	Percent
Total Employed	20,810	100.0	75,319	100.0
Agriculture, Forestry & Fishing	243	1.2	1,438	1.9
Mining	27	0.1	124	0.2
Construction	1,440	6.9	6,395	8.5
Manufacturing	2,417	11.6	13,626	18.1
Durable Goods	689	3.3	3,119	4.1
Nondurable Goods	1,728	8.3	10,507	13.9

PLAINTIFF EXHIBIT #25



Population

Population Trends
Racial Composition
Population by Tract
Age Distribution

POPULATION

The 1970 population of Northwest Florida represented 5.1 percent of the total population of Florida. From 1960 to 1970, regional population grew more rapidly than that of the United States or the Southeast in general. However, the population growth rate has had its advantages in that many communities in South Florida have experienced serious problems because of the rapid growth rate. Northwest Florida has experienced a gradual, but consistant growth rate, which allows for proper planning.

The greatest population of this region, which includes Escambia, Santa Rosa, Okaloosa and Walton counties, is concentrated in Escambia County. Of the five regional communities with a population of 10,000 or more, four are located in Escambia County.

Unlike other parts of the State that have, or are becoming increasingly hesitant in regard to residential and industrial development both because of population density problems and soil limitations, the Pensacola Metropolitan Area has few density constraints, and even fewer soil limitations.

If past trends show a population mix that is not characteristic of mature economic and social growth, projected trends indicate a more positive growth pattern. Projections based strictly upon past trends (which may be appropriate in some cases) indicate a conservative trend or growth at a relatively low rate during the sixties. However, there are a number of barometers and indications that the Pensacola Metro Area will experience a more rapid growth rate during the next decade. The addition of several

million square feet of retail shopping space is indicative, at least, of changes in population dispersion patterns. A number of large residential developments are appearing throughout the Pensacola area, and represent substantial investments. The Jay oil field phenomenon has contributed both population and disposable income to the Pensacola economy. Tourism, once only present in South Florida, is fast becoming one our largest industries. The gulf beaches along Northwest Florida are attracting tourists at an ever increasing rate.

The Pensacola Metro Area is characterized by youth. The medium age is 24.3 years, as compared to 32.3 years for the State of Florida. On one hand the Region is expected to increase its share of retirees and, on the other, decrease the proportions of its population under five years. There is no single reason for this virtually universal phenomenon (except maybe "zero population growth"). However, the fact that the mature labor force will remain within the Region in response to employment and residential opportunities is an indication of a healthy labor market. The fact that the percentage of our population over age sixty-five in increasing reflects the region's increasing attraction for retirees, and its diminished pattern of out-migration.

Approximately 25 percent of the Pensacola Metro Area population was classified Rural according to the 1970 census. The population of Rural areas has fallen steadily since 1960. Between 1960 and 1970 the area has experienced a 40 percent increase in Urban residents.

Although the City of Pensacola has a population of approximately 60,000 within the city limits, there is a population of over 175,000 residents within a 10-mile radius.

POPULATION TRENDS

Following are actual population figures for 1930, 1940, 1950, 1960 and 1970, estimates for 1975; and projections for 1980 and 1985. Population estimates and projections may vary slightly according to the agency making the estimate or projection. Although figures may vary, all planners foresee a healthy population growth rate for the Pensacola Metropolitan Area.

Year	City of Pensacola	Escambia County	Santa Rosa County	Pensacola SMSA
1930	31,305	53,594	17,083	70,677
1940	37,449	74,594	16,085	90,752
1950	43,479	112,706	18,554	131,260
1960	56,752	173,829	29,547	203,376
1970	59,507	205,334	37,741	243,075
1975*	61,008	241,734	52,438	294,172
1980**	62,547	269,508	57,895	327,403
1985**	64,124	320,088	65,814	385,902

*Estimate **Projection

SOURCE: United States and Florida Departments of Commerce

Population Composition:	City of Pensacola	Escambia County	Santa Rosa County	Pensacola SMSA
Total Population	59,707	205,334	37,741	243,075
Non-White Population	19,968	42,320	2,249	44,569
Percent of Non-Whites	33.6%	20.6%	6.0%	18.4%

SOURCE: 1970 U.S. Census

Population by Age Group: 1970

	Under 18	18-44	45-64	Over 65
Escambia County	74,104	81,119	36,911	13,200
Santa Rosa County	13,859	15,566	6,030	2,286
PENSACOLA SMSA	87,963	96,685	42,941	15,486
State of Florida	2,112,275	2,224,662	1,466,816	985,690

(Source: Florida Dept. of Commerce)

Population by Sex: 1970

	MALE	% of Total Population	FEMALE	% of Total Population
Escambia County	102,348	49.8%	102,986	50.2%
Santa Rosa County	19,362	51.3%	18,379	48.7%
PENSACOLA SMSA	121,710	50.0%	121,365	50.0%
State of Florida	3,274,895	48.2%	3,514,548	51.8%

(Source: Florida Dept. of Commerce)

Population by Race: 1970

	White	% White	Negro	% Negro	Other	% Other
Escambia County	162,993	79.4%	40,384	19.7%	1,957	0.9%
Santa Rosa County	35,317	93.6%	2,157	5.7%	267	0.7%
PENSACOLA SMSA	198,310	81.5%	42,541	17.5%	2,224	0.9%
State of Florida	5,711,411	84.1%	1,049,578	15.5%	28,454	0.4%

(Source: Florida Dept. of Commerce)

Population Density:

	1970 Population	Land Area in Square Miles	Population Per Square Mile
Escambia County	205,334	657	325.7
Santa Rosa County	37,741	1,024	38.5
Pensacola SMSA	243,075	1,681	182.1

(Source: Florida Dept. of Commerce)

This chart shows the population and percentages of changes for the Pensacola Metro Area, the Southeast, the State of Florida, and the United States, between the 1960 and 1970 census:

	1960	1970	Percent of Change
Pensacola Metro Area	203,379	243,075	19.5%
State of Florida	4,951,560	6,789,443	37.1%
Southeast	24,845,395	28,636,357	15.3%
United States	179,32- 5,369	203,16- 5,699	13.3%

Source: U.S. Bureau of Census – 1970

Escambia County is the most populous of the regional counties which include Escambia, Santa Rosa, Okaloosa and Walton. The following chart shows population increases, and percentages of increases between 1960 and 1970:

	1960	1970	Percent of Change
Escambia County	173,829	205,334	18.1%
Santa Rosa County	29,547	37,741	27.7%
Okaloosa County	61,175	88,187	44.2%
Walton County	15,576	16,078	3.3%

Source: U.S. Bureau of Census – 1970

Population by Sex and Race	Pensacola SMSA	Florida	South	United States
Male	50.2%	48.2%	48.4%	48.7%
Female	49.8%	51.8%	51.6%	51.3%
White	81.6%	84.1%	76.6%	87.4%
Nonwhite	18.4%	15.9%	23.4%	12.6%

Source: U.S. Bureau of Census – 1970

Population Change and Net Migration: 1960 to 1970

Year and Population Change	Escambia County	Santa Rosa County	Pensacola SMSA
Population: 1960	173,829	29,547	203,376
Population: 1970	205,334	37,741	243,075
Change: 1960 to 1970	31,505	8,194	39,699
Percent of Change	18.1%	27.7%	19.5%
Births: 1960 to 1970	46,813	9,548	56,361
Deaths: 1960 to 1970	13,589	2,308	15,897
Net Migration	-1,719	954	-765

(Source: U.S. Dept. of Commerce)

Population of Principal Cities in Escambia and Santa Rosa Counties:

	1960	1970	1975
ESCAMBIA COUNTY	173,829	205,334	214,017
Cantonment	NA	3,241	NA
Century	NA	2,479	NA
Myrtle Grove	NA	16,186	NA
Pensacola	56,752	59,507	63,138
South Flomation	462	329	472
Warrington	NA	15,825	NA
West Pensacola	NA	20,924	NA
SANTA ROSA COUNTY			
Gulf Breeze	NA	4,190	5,186
Jay	672	646	779
Milton	4,108	5,360	5,677
Pace	NA	1,776	NA
Whiting Field	NA	3,439	NA

NA: Not Available
(Source: Florida Dept. of Commerce)

Natality and Mortality:

Generally speaking, birth rates in the Pensacola area continue to be higher, and death rates lower than those evidenced in the State of Florida and the United States. Total number of births are decreasing while the relative death rate has remained more stable. However, in comparison, the rate and number of births remain high.

In 1960, Escambia County had a birth rate of 30.9 and Santa Rosa County a birth rate of 33.4 births per 1,000 population, as compared to 23.1 for Florida and 23.7 for the Nation. The birth rate has declined considerably since then. In 1957, the birth rate for Escambia County was 16.9, and for Santa Rosa County 17.1, while the birth rate for the state was 13.8. The birth rate, though declining, is likely to remain above average because of the relatively young population in the area. It is interesting to note that the non-white birth rate has not decreased as much as the total birth rate and, in fact, is increasing in Santa Rosa County.

Birth Rates per 1,000 Persons

	1960	1965	1975
Escambia County	30.9	23.5	21.7
Santa Rosa County	33.4	25.1	22.4
State of Florida	23.1	18.4	13.4
United States	23.3	19.4	15.0

(Source: Florida Dept. of Vital Statistics)

The crude death rates for the Pensacola are in 1960 were 7.1 for Escambia County and 7.2 for Santa Rosa County, as compared with 9.6 for Florida and 9.5 for the Nation.

(Based on number of deaths per 1,000 population). Once again, the youth of the area's population is a factor. By 1975 the death rate for Escambia County was 7.3 and for Santa Rosa County 6.7. Non-white death rates were higher than white death rates in both Escambia and Santa Rosa Counties.

Principal causes for death for the Pensacola area do not vary appreciably from those for the entire State or for the Nation. Heart diseases, cancer, cerebrovascular diseases and accidents continue to take a high toll of the population. More than 70 per cent of all deaths in the area are attributed to one of these four killers.

Death Rates per 1,000 Persons

	1950	1965	1975
Escambia County	7.1	7.3	7.3
Santa Rosa County	6.3	5.2	6.7
State of Florida	9.9	10.5	11.6
United States	9.5	9.4	9.8

(Source: Florida Dept. of Vital Statistics)

RACIAL COMPOSITION:

The 1970 U.S. Census showed that Escambia County accounted for approximately 94% of all non-white families in the Pensacola metro-area. A little over 50% of the non-white families resided within the city limits of Pensacola. A little over 50% of the non-white families resided within the city limits of Pensacola. Although the non-white population accounts for 20.6% of the area's total population, they account for approximately 44 percent of all people with incomes below the poverty level.

Distribution of Non-White Population:

CITY OF PENSACOLA	1960	1970
Total Population	56,752	59,707
Non-White Population	18,672	19,968
Percentage of Non-Whites	32.9%	33.6%
ESCAMBIA COUNTY		
Total Population	173,829	205,334
Non-White Population	36,404	42,320
Percentage of Non-Whites	20.9%	20.6%
SANTA ROSA COUNTY		
Total Population	29,547	37,741
Non-White Population	2,163	2,249
Percentage of Non-Whites	7.3%	6.0%
PENSACOLA SMSA		
Total Population	203,547	243,075
Non-White Population	38,567	44,569
Percentage of Non-Whites	19.0%	18.4%

General Characteristics of the Negro Population:

POPULATION	Pensacola SMSA	Escambia County	Santa Rosa County	City of Pensacola
Total – all ages	42,309	40,344	1,965	19,674
Male – all ages	19,979	19,095	884	8,952
Female – all ages	22,330	21,249	1,081	10,722
SCHOOL ENROLLMENT				
Persons 16 Years old and over	5,163	4,880	283	2,159
Not attending school	2,627	2,480	147	1,116
Not HS Grads	1,259	1,208	51	560
YEARS OF SCHOOL COMPLETED				
Persons 25 years and over	18,300	17,516	784	9,434
No School completed	917	907	10	362
Elementary: 1 to 4 yrs.	2,675	2,552	123	1,330
5 to 7 yrs.	3,453	3,299	154	1,764
8 years	1,774	1,719	55	999

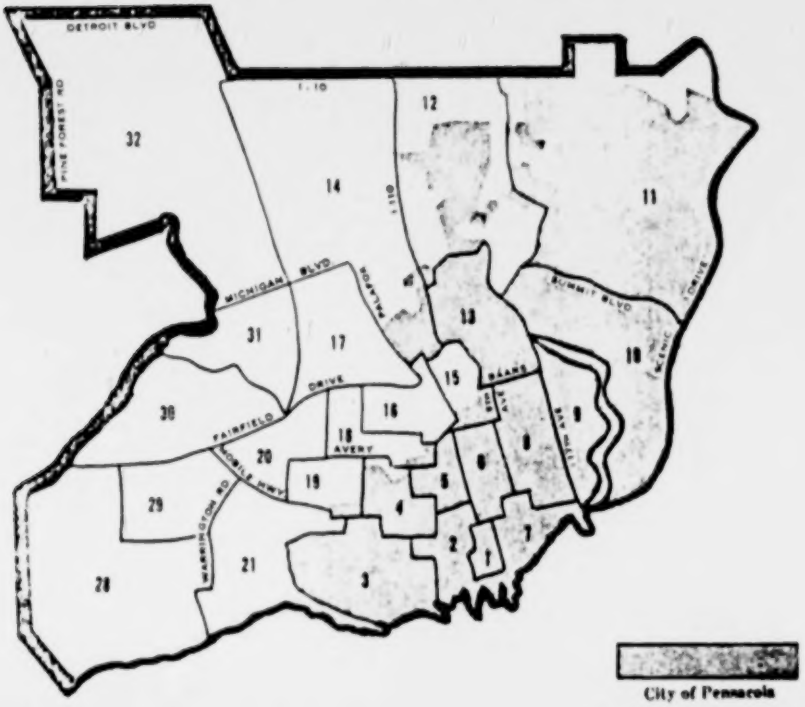
Years of School Completed (con't)	Pensacola SMSA	Escambia County	Santa Rosa County	City of Pensacola
High School: 1-3 yrs.	4,410	4,168	242	2,192
4 yrs.	3,495	3,374	121	1,897
College: 1-3 years	942	902	40	474
4 yrs. or more	634	595	39	416
Median School years Completed	9.2	9.2	9.6	9.4
Percent HS Grads	27.7%	27.5%	25.5%	29.5%

(Source: U.S. Census – 1970)

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photo page 970.....Census Tracts....

Census Tracts



GENERAL CHARACTERISTICS OF POPULATION BY TRACT

	Total Population	Percent Negro Population	Number of Houses	Avg. Value of Houses	Percent Population Under 18	Percent Population 19 to 61	Percent Population Over 62
Tract No. 1	260	41%	119	$15,700	15%	61%	24%
Tract No. 2	3,820	51%	1,689	$ 8,600	30%	50%	20%
Tract No. 3	4,659	13%	1,759	$10,100	30%	56%	14%
Tract No. 4	5,932	93%	1,799	$ 8,700	43%	47%	10%
Tract No. 5	2,203	35%	941	$19,000	29%	52%	19%
Tract No. 6	5,116	96%	1,871	$ 8,400	37%	49%	14%
Tract No. 7	3,232	53%	1,169	$ 8,700	39%	56%	15%
Tract No. 8	5,601	23%	2,411	$13,500	24%	54%	22%
Tract No. 9	3,372	4%	1,377	$20,800	24%	57%	19%
Tract No. 10	7,029	—	2,335	$25,200	35%	57%	8%
Tract No. 11	8,302	—	2,414	$20,300	41%	56%	3%
Tract No. 12	6,182	1%	2,063	$16,400	30%	62%	8%
Tract No. 13	5,854	9%	1,830	$18,700	36%	57%	7%

	Total Population	Percent Negro Population	Number of Houses	Avg. Value of Houses	Percent Population Under 18	Percent Population 19 to 61	Percent Population Over 62
TOTALS – City of Pensacola	61,562	32%	21,777	$14,930*	37.7%	48.3%	14.0%
Tract No. 14	6,809	22%	2,080	$14,200	41%	53%	6%
Tract No. 15	3,441	96%	1,050	$11,200	34%	61%	5%
Tract No. 16	3,540	82%	942	$ 8,200	43%	46%	11%
Tract No. 17	4,738	39%	1,437	$ 9,100	44%	48%	8%
Tract No. 18	4,820	10%	1,762	$ 8,700	33%	54%	13%
Tract No. 19	3,037	–	1,195	$ 9,000	30%	55%	15%
Tract No. 20	3,471	33%	1,190	$ 9,400	38%	54%	8%
Tract No. 21	6,720	1%	2,544	$11,400	32%	60%	8%
Tract No. 22	6,684	5%	2,385	$11,500	37%	55%	8%
Tract No. 23	6,861	4%	2,144	$17,000	28%	60%	12%
Tract No. 24	4,816	4%	448	**	22%	78%	– %
Tract No. 27	2,828	29%	980	$ 9,100	39%	54%	7%
Tract No. 28	8,413	1%	2,071	$17,500	31%	65%	4%
Tract No. 29	5,575	–	1,730	$11,900	39%	55%	6%
Tract No. 30	6,753	2%	2,008	$14,700	41%	55%	4%

	Total Population	Percent Negro Population	Number of Houses	Avg. Value of Houses	Percent Population Under 18	Percent Population 19 to 61	Percent Population Over 62
Tract No. 31	4,886	1%	1,345	$13,800	45%	53%	2%
Tract No. 32	7,340	47%	1,916	$12,400	47%	49%	4%
Tract No. 33	6,612	–	2,000	$13,000	40%	56%	4%
Tract No. 34	4,273	13%	1,329	$11,900	40%	53%	7%
Tract No. 35	9,933	11%	2,568	$15,700	36%	59%	5%
Tract No. 36	4,497	1%	1,239	$20,400	35%	60%	5%
TOTALS:							
Tracts 14-36	116,048	19.0%	34,363	$11,909*	39.9%	56.3%	7.0%
TOTALS:							
Tracts 1-13	61,562	32.2%	21,777	$14,930*	37.7%	48.3%	14.0%
GRAND TOTALS:							
Tracts 1-36	177,610	24.1%	56,140	$13,460*	34.9%	55.4%	9.7%

* Average

** Not Available

Source: (U.S. Census – 1970)

Plaintiff Exhibit #32

DULLAS TRACT

Inre: Traders Brokerage Co., et al., (Restrictions), filed April 16, 1940. 3 p.m.

State of Florida:

County of Escambia:

KNOW ALL MEN BY THESE PRESENTS: WHEREAS, we the undersigned are owners of the property in the City of Pensacola, Florida, and more particularly described as follows: Lots 19 to 28, both inclusive, in Block 20; owners, A. C. Blount and Mary S. Blount, husband and wife. Lots 9 to 11, both inclusive, in Block 19; owner, Traders Brokerage Company, a corporation.

Said property being in North Hill Highlands, being the Dallas Land Company's resubdivision of part of the Dallas Tract, as shown by map of same recorded in Deed Book 62 at Page 244 and Deed Book 64 at Page 572 of the public records of Escambia County, State of Florida.

WHEREAS, we the owners of the above described properties are desirous of placing restrictions on the use of the said property for residential purposes:

THEREFORE, THESE PRESENTS WITNESSETH: That the parties to this agreement, for and in consideration of the mutual covenants herein contained and the further consideration of one ($1.00) Dollar in hand paid by each of the parties to the other, the receipt whereof is hereby acknowledged, and for other good and valuable consideration, do herein and hereby covenant and agree

one with the other, for ourselves, our heirs, successors, assigns and legal representatives, that as to said property above described, the following restrictions placed upon our respective holdings as come within the boundaries above described:

(a) All lots in the tract shall be known and described as residential lots, and no structures shall be erected on any residential building plot other than one detached single-family dwelling not to exceed two stories in height and a one or two car garage.

(b) No building shall be erected on any residential building plot nearer than 20 feet to the front lot line, nor nearer than five (5) feet to any side lot line. The side-line restriction shall not apply to garage located on the rear one-quarter of lot, except that on corner lots no structure shall be permitted nearer than eight (8) feet to the side street line.

(c) No race or nationality other than caucasian shall use or occupy any building or lot, except that this covenant shall not prevent occupancy by domestic servants or a different race or nationality employed by an owner or tenant.

(d)No building shall be erected on any residential building plot having an area of less than eighty-four hundred (8400) square feet or a frontage of less than sixty (60) feet.

(e) No noxirous or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(f) No structure shall be moved onto any lot unless it meets with the approval of the committee hereunafter

referred to, or if there is no committee, it shall conform to and be in harmony with existing structures in the tract.

(g) No building shall be erected on any lot until the design and location thereof have been approved in writing by a committee appointed by the suddivider or elected by a majority of the owners of lots in said subdivision. However, in the event that such committee is not in existence or fails to approve or disapprove such design or location within fifteen (15) days, then such approval will not be required provided the design and location on the lot conform to and are in harmony with existing structures in the tract. In any case either with or without the approval of the committee, no dwelling costing less than Thirty-five Hundred ($3500) Dollars shall be permitted on any lot in the tract, and the ground floor square foot area thereof shall not be less than nine hundred (900) square feet in the case of a one-story structure nor less than seven hundred (700) square feet in the case of a one-and-one-half or two-story structure.

(h) No trailer, basement, tent, shack, garage, barn, or other cut buildings erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.

(i) These covenants and restructions are to run with the land and shall be binding on all of the parties and all persons claiming under them until January 1, 1970, at which time said covenants and restrictions shall terminate.

(j) If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants or restrictions herein before January 1, 1970, it shall be lawful for any other person or persons owning any other lots in said development or subdivision to prosecute

any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from so doing or to recover damages or other dues for such violation.

(k) Invalidation of any one of these covenants by judgment or court order shall in no wise effect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, We hereunto set our hands and seals this 11 day of April, 1940.

WITNESSES: Traders Brokerage Co. (Seal)
Lee Daniell By O. J. Semmes, (Seal)
C. C. Wehmeier, (Corporate Seal) Pres.
As to O. J. Semmes.
Malcolm Yonge, A.C. Blount, (Seal)
Carroll Watson
As to A. C. Blount and Mary S. Blount, (Seal)
Mary S. Blount.

#474

Inre: Terry Richardson, et al., Restrictions, filed July 31, 1940. 11 A.M.

State of Florida:

County of Escambia:

KNOW ALL MEN BY THESE PRESENTS, That: WHEREAS, we the undersigned owners of property inthe City of Pensacola, Florida, and more particularly described as follows; To-wit:

Terry Richardson and Virginia L. Richardson, owners of Lots 5 and 6; Harry E. Fowler and Nellie R. Fowler,

owners of Lots 7 and 8; J. E. Driskell and Beatrice N. Driskell, owners of lots 9 and 10; Crawford Rainwater and Betty G. Rainwater, owners of lots 11 and 12; all being in Block 176 of the Salter Tract;

Terry Richardson and Virginia L. Richardson, owners of lots 16 to 19 both inclusive in Block 177 of the Salter Tract;

All Block 178, Salter Tract, B. A. Murphy as agent for Mary E. Murphy.

Lots 1 to 4, inclusive in Block 1 North Highlands, B. A. Murphy as agent for Mary E. Murphy.

WHEREAS, we the owners of the above described property are desirous of placing restrictions on the use of the said property for residential purposes:

Therefore, These Presents Witnesseth: That the parties to this agreement, for and in consideration of the mutual covenants herein contained and the further consideration of One ($1.00) Dollar in hand paid by each of the parties to the other, the receipt whereof is hereby acknowledged, and for other good and valuable consideration, do herein and hereby covenant and agree one with the other, for ourselves, our heirs, successor and legal representatives, that as to said property above described, the following restrictions placed upon our respective holdings as come within the boundaries above described;

(a) All lots in the tract shall be known as residential lots, and no structure shall be erected on any lot other than one detached single-family dwelling not exceeding two stories in height and a one or two car garage.

(b) No building shall be erected on any residential building plot nearer than 25 feet to the front lot line, nor

nearer than Five (5) feet to any side lot line. The side line restriction shall not apply to any garage located on the rear one-quarter of lot, except that on corner lots no structure shall be permitted nearer than Eight (8) feet to the side street line.

(c) No race or nationality other than caucasian shall use or occupy any building on lot, except that this covenant shall not apply to domestic servants of a different race or nationality employed by the owner or tenant.

(d) No building shall be erected on any residential building plot having an area of less than 7000 square feet or a frontage of less than Fifty (50) feet. Block 178 Salter Tract is hereby expressly excepted from this covenant because of its shape and size.

(e) No noxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(f) No structure shall be moved on to any lot unless it meets with the approval of the committee herein after referred to, or if there is no committee, it shall conform to and be in harmony with existing structures in the tract.

(g) No building shall be erected on any lot until the design or location thereof have been approved in writing by a committee appointed or elected by a majority of the undersigned owners of the lots herein described. However, in the event such a committee is not in existence or fails to approve or disapprove such design or location within fifteen days, then such approval will not be required provided the design and location on the lot conform to and are in harmony with the existing structures in the tract. In any case with or without the approval of the committee,

no dwelling shall be erected costing less than Two Thousand Five Hundred ($2500.00) Dollars on any lot in the tract, and the ground floor area thereof shall not be less than Nine Hundred (900) square feet in the case of a one-story structure nor less than Seven Hundred (700) square feet in the case of one and one-half or two story structure.

(h) No trailer, basement, shack, tent, garage, barn, or other outbuilding erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted. This does not apply to quarters to be occupied by domestic servants.

(i) Any structure erected on Lots 16 to 19, Block 177 Salter Tract, herein above described shall have its main front entrance facing North or East.

(J) These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 1970, at which time the covenants and restriction shall terminate.

(k) If the parties hereto or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants or restrictions herein, before January 1, 1970, it shall be lawful for any other person or persons claiming under them or owning said lots named herein in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either prevent him or them from so doing or to recover damages or other dues for such violation.

(l) Invalidation of any one of these covenants by judgment or court order shall in no wise effect of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, we hereunto set our hands and seals this 19th day of April, A. D., 1940.

* * *

Inre: R. M. Jernigan, et al., (Restrictions #1005), filed Aug. 23, 1940. 10 A. M.
State of Florida:
County of Escambia:

KNOW ALL MEN BY THESE PRESENTS THAT: Whereas, we the undersigned are the owners of the property in the City of Pensacola, Florida, and more particularly described as follows:

Lots 25, 26, 27 and 28, Block 9, North Highlands – Owner, Mrs. Mary C. Keyser.

Lots 23 and 24, Block 9, North Highlands – Owner, R. M. Jernigan. of the North Highlands;

Lots above named are described according to map of said plan North Highlands being a sub-division of Section eighteen (18), Township Two (2) South, Range Thirty (30) West, Pensacola, Florida, Escambia County, Florida.

WHEREAS, we the owners of the above described properties are desirous of placing restrictions on the use of the said property for residential purposes;

THEREFORE, THESE PRESENTS WITNESSETH: That the parties to this agreement, for and in consideration of the mutual covenants herein contained and the further consideration of One ($1.00) Dollar in hand paid by each of the parties to the other, the receipt whereof is hereby acknowledged, and for other good and valuable consideration, do herein and hereby covenant and agree one with the other, for ourselves, our hairs, successors, assigns and legal representatives, that as to said property

above described, the following restrictions placed upon our respective holdings as come within the boundaries above described:

(a) All lots in the tract shall be known and described as residential lots, and no structures shall be erected on any residental building plot other than one detached single family dwelling not to exceed two stories in height and a one of two car garage.

(b) No building shall be erected on any residental building plot nearer than 15 feet to the front lot line, nor nearer than five (5) feet to any side lot line. The side line restriction shall not apply to garage located on the near one-quarter of lot, except that on corner lots no structure shall be permitted nearer than eight (8) feet to the side street line.

(c) No race or nationality other than caucasian shall use or occupy any building on lot, except that this covenant shall not prevent occupancy by domestic servants of a different race or nationality employed by an owner or tenant.

(d) No residental lot shall be resubdivided into building plots having less than six (6,000) thousand square feet of area, or a width of less than sixty (60) feet each, nor shall any building be erected on any residental building plot having an area of less than sixty (60) square feet or a frontage of less than sixty (60) feet.

(e) No noxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(f) No structure shall be moved onto any lot unless it meets with the approval of the committee hereinafter referred to, or if there is no committee, it shall conform to and be in harmony with existing structures in the tract.

(g) No building shall be erected on any lot until the design and location thereof have been approved in writing by a committee appointed by the subdivider or elected by a majority of the owners of lots in said sub-division. However, in the event that such a committee is not in existence or fails to approve or disapprove such design or location within 15 days, then such approval will not be required provided the design and location on the lot conforms to and are in harmony with existing structures in the tract. In any case either with or without the approval of the committee, no dwelling costing less than Three ($3,000.00) Thousand dollars shall be permitted on any lot in the tract, and the ground floor square foot area thereof shall not be less than Nine hundred (900) square feet in the case of a one-story structure nor less than seven hundred (700) square feet in the case of a one-and one-half or two-story structure.

(h) No trailer, basement, tent, shack, garage, barn, or other outbuildings erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.

(i) These covenants and restrictions are to run with land and shall be binding on all the parties and all persons claiming under them until January 1, 1970, at which time said covenants and restrictions shall terminate.

(j) If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants or restrictions herein before January 1, 1970, it

shall be lawful for any other person or persons owning any other lots in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from so doing or to recover damages or other dues for such violation.

(k) Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 20th day of Aug., 1940.

Witnesses:

R.C. Caldwell, Mary C. Keyser, (Seal)
J. Whiting Hyer, R.M. Jerrigan, (Seal)
C.C. Hounstein,
Cleo Jersan.

STATE OF ALABAMA
COUNTY OF ESCAMBIA

Before the subscriber, a Notary Public, personally appeared R. M. Jernigan, to me.

PLAINTIFF EXHIBIT #33

VOTES CAST FOR ALL CANDIDATES IN SELECTED PRECINCTS

September 1976 Primary (including percentage turnout)

		County Commission			School Board				
	Precinct	**1**	**3**	**5**	**2**	**4***	**6**	**7***	**Total registered**
Black:	49	273 36%	257 34%	217 28%	219 29%	387 52%	230 31%	376 50%	749
	76	198 34%	199 34%	153 27%	158 27%	292 51%	155 27%	264 46%	575
	90	152 36%	146 34%	121 28%	105 25%	210 49%	106 25%	206 48%	425
	91	202 32%	193 31%	158 25%	153 24%	271 43%	136 22%	266 42%	630
	28	479 37%	450 35%	391 30%	356 28%	611 47%	360 28%	601 47%	1291

		County Commission			School Board				
	Precinct	1	3	5	2	4*	6	7*	Total registered
White:	18	133 57%	131 56%	144 62%	114 49%	106 45%	117 50%	158 68%	234
	33	189 53%	183 52%	205 58%	163 46%	147 41%	157 44%	135 38%	355
	55	322 52%	315 51%	317 51%	302 49%	293 47%	294 47%	237 38%	619
	87	391 42%	391 42%	378 41%	380 41%	365 39%	358 39%	340 37%	929
	35	702 50%	695 50%	677 49%	654 47%	655 47%	655 47%	587 42%	1394
	46	491 54%	485 53%	476 52%	443 49%	458 50%	461 51%	424 47%	908

White Precincts

18	40.9%
33	33.7%
55	29.7%
87	47.9%
35	46.5%
46	51.6%
96	51.6%
107	49.1%

Average Turnout – 42-67%

May 2, 1976 – Special School Board Referendum

Black Precincts

49	14%
76	14%
90	14%
91	9%
28	9%

White Precincts

18	27%
33	17%
55	16%
87	18%
35	21%
46	36%
96	37%
107	28%

Average Turnout – 20%

	County Commission			School Board				
Precinct	1	3	5	2	4*	6	7*	Total registered
96	664 48%	650 47%	637 46%	624 45%	635 46%	626 45%	590 43%	1382
107	729 47%	706 46%	708 46%	692 45%	700 45%	718 47%	667 43%	—

*Black candidates: Spence for Place 4; Jenkins for Place 7.

VOTER TURNOUT SUMMARY

1976 Elections

March 9, 1976 Presidential Preference Primary

Black Precincts

49	58%
76	56%
90	56%
91	51%
28	46%

White Precincts

18	58%
33	49%
55	61%
87	56%
35	59%
46	62%
96	60%
107	59%

Average Turnout – 57%

March 9, 1976 – Constitutional Amendment to limit taxes for water management districts

Black Precincts

49	22.1%
76	19.1%
90	19.1%
91	14.4%
28	15.2%

PLANTIFF'S EXHIBIT #55

ADVICE SLIP

TO: Jay

SUBJECT:

Date: 12-29-75

__Please note and file
__Please note and return to me
__Please note and see me about this
__Please handle this
__For your information
__Your comments, please
__To be typed __ copies
__To be xerox'd __ copies
__Please answer with copy me
__Prepare information for me to reply
__Returning to your files
__To be filed
__To be checked

Additional Remarks:

Keep this for info & reference, if she requests this of Council.

10-26-76
Mrs. McMillan
rec'd copies of past election res. from 1955 on ward maps, etc. on & subj.

From:

MEMORANDUM

TO: Don J. Caton, City Attorney

DATE: June 17, 1977

RE: *Jenkins v. City of Pensacola*

1959 Referendum to change to at-large elections. Relevant material and *News Journal* was supportative in their news articles and editorials for the change to at-large elections for City Council. To quote from an October 6, 1959 *News Journal* editorial, ". . .We believe it is better for all the people to have a say in the election of all the Councilmen, rather than being restricted to just six of them."

Pensacola News Journal, Oct. page 1A

Out of 10,874 people eligible to vote, only 2,029 voted. One thousand seven hundred twenty-two were for the change, 307 against. All precincts voted for the change except one – Precinct #90, ". . . a predominately Negro area around the J. Lee Pickens School, cast 10 votes against the change and 7 for." There were 308 qualified *black* voters in this precinct and zero (0) white.

There are seven attached News articles that refer to the election, which seems to point out that there was adequate news coverage. As can be seen from the vote in Precinct 90, (308 qualified black voters – only 17 voted), interest or

concern was not displayed for the election in this black precinct, which may be an indication of other black precincts.

/s/
Thomas Bell
MPA Intern

TB/dle.
Attachments

22 December 1975

Mrs. Charlene Nimmo
4655 Mariana Avenue
Pensacola, FL 32504

Dear Mrs. Nimmo:

This is in response to the note which you wrote to me a week or so ago. In your note you requested my advice on the procedure for changing some of the City Council positions to elections by district rather than at large. You indicated in you rnote that your inquiry comes from the Chamber Minority Involvement Task Force.

The duties of my office involve several areas including the giving of advice to the City Council on various matters. I am not allowed to give specific advice or opinions to private individuals or groups unless specifically instructed to do so by the City Council. Therefore, I will be unable to respond to your question directly. If the City Council becomes interested in this particular subject and wishes to request my advice on it, then, of course, I would respond to them.

I might suggest, however, that you contact the City Clerk's office or the City Manager's office on this particular subject. You will find that the current procedure of electing City Councilmen was changed some years back to the present system. The City Clerk's office may have some information indicating why that change was made.

Sincerely yours

/s/ Don J. Caton
City Attorney

Mr. Faison:

Yes, she wanted my advice too. I told her that a Special Act would be necessary with (I assumed) approval in a referendum as was the case in 1959 when the present system was adopted. She asked "how" and I replied somewhat nebulously suggesting that if the LWV (or whatever group) was interested, they could propose it to the Delegation altho I was sure they would want Council input. This was *before* she talked to Don Caton. I told her that he handled our Legislation for the Council and she seemed to be wondering out loud (or probing) as to whether there would be much support in Council for her proposal. I discussed briefly the "Philosophy" behind the present system and its advantages. She lightly debated it (hinting about minority dissatisfaction and feelings of being disenfranchised which I could smell coming) whereupon I told her it was essentially a political question which I wasn't in a position to argue. Then she must have must have moved on to Don Caton.

In case we need it, I've dug up an the old info we've got on this from the 1959 referendum.

Signature illegible...

J 10/4/59

NOTICE

MUNICIPAL SPECIAL REFERENDUM ELECTION

THE CITY OF PENSACOLA

OCTOBER 6, 1959

ON THE QUESTION – Do you desire the City of Pensacola to change its present system of election for the office of councilman to be elected within the City of Pensacola at large?

(Pursuant to the passage of 59-1730, Laws of Florida 1959)

Chas. H. Walker
City Clerk Comptroller

RESOLUTION
No. 26-59

ADOPTED: AUGUST 20, 1959
A RESOLUTION TO BE ENTITLED:

A RESOLUTION PROVIDING FOR THE HOLDING OF A REFERENDUM ELECTION ON OCTOBER 6, 1959; DESIGNATING THE CLERKS AND INSPECTORS OF EACH ELECTION DISTRICT FOR THE HOLDING OF SAID ELECTION, WITH PROVISION FOR SUBSTITUTE OR ADDITIONAL CLERKS AND INSPECTORS: DESIGNATING THE POLLING PLACES IN EACH ELECTION DISTRICT PROVIDING FOR THE PUBLICATION OF SUCH LIST OF CLERKS, INSPECTORS AND POLLING PLACES: PROVIDING FOR THE COMPENSATION OF SAID CLERKS AND INSPECTORS: PROVIDING FOR THE COUNTING, CANVASSING AND CERTIFICATION OF THE RESULTS OF THE VOTES CAST IN SAID ELECTION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. That pursuant to the passage of 59-1730, Laws of Florida of 1959, a Special Referendum Election shall be held on Tuesday - October 6, 1959 to determine whether or not the composition of the City Council and the term of the Councilmen of the City of Pensacola shall be by a vote of all of the qualified electors of the City of Pensacola at large and to alter and amend the existing method of election for members of the City Council of the City of Pensacola. That there shall be one clerk and three inspectors of election and said clerks and inspectors of

election are hereby named and designated and the following polling place in each election-district is hereby designated as follows:

STATE OF FLORIDA

OFFICE OF SECRETARY OF STATE

I.R.A. Gray. Secretary of State of the State of Florida, do hereby certify that the above and foregoing is a true and correct copy of chapter 59-1730, Laws of Florida, Regular Session 1959, as filed in this office.

Given under my hand and the Great Seal of
the State of Florida at Tallahassee, the Capital,
this the 6th day of July
A.D. 1959

/s/ RW Gray
Secretary of State

SECTION 2. REFERENDUM.

The City of Pensacola, through its designated election officials, shall cause to be held within the City of Pensacola a referendum of all of the qualified voters qualified in the last general election of the City of Pensacola to determine whether or not this act shall become effective. Said referendum shall be held in accordance with the laws and ordinances of the City of Pensacola relating to general elections and in the manner provided by law upon publication of notice at least thirty (30) days prior to the holding of said referendum election.

It shall be the duty of the City Council of the City of Pensacola, Florida, to call such referendum within six (6) months from the passage of this act and it becoming law.

That at such referendum the following proposition shall be proposed to the qualified, registered voters of the City of Pensacola, in words and figures substantially as follows:

> "Vote Yes or No on the following proposition by marking X by the appropriate word in answer to the proposition DO YOU DESIRE THE CITY OF PENSACOLA TO CHANGE ITS PRESENT SYSTEM OF ELECTION FOR THE OFFICE OF COUNCILMAN OF THE CITY OF PENSACOLA BY REQUIRING COUNCILMEN TO BE ELECTED WITHIN THE CITY OF PENSACOLA AT LARGE"?

SECTION 3. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This act shall become effective immediately upon it becoming law for the purpose of calling and holding the election herein provided for in the adoption of

the amendment to the City Charter of the City of Pensacola provided for by this act.

If a majority of the qualified voters of the City of Pensacola, voting in the special referendum election herein provided to be called and held for the purpose of approving the amendment to the City Charter, vote in favor of and for its ratification and approval, the same shall become effective immediately as a part of the Charter of Pensacola.

Became a law without the Governor's approval.
Filed in Office Secretary of State June 20, 1959.

CERTIFICATE OF THE BOARD OF CANVASSERS FOR THE SPECIAL REFERENDUM ELECTION HELD ON TUESDAY – OCTOBER 6, 1959

We, the undersigned Board of Canvassers designated to canvass the returns of the Special Referendum Election held in the several Election Districts of The City of Pensacola, Florida, on TUESDAY, OCTOBER 6, 1959, as required by the provisions of RESOLUTION NO. 26-59, adopted August 20, 1959, being a resolution "Providing For The Holding Of The Referendum Election", on October 6, 1959, to determine if all analysis of the City Council should be elected by the city at large, do hereby certify that we did on the 8th day of October, 1959, publicly proceed to canvas the votes cast at said Special Referendum Election for the determination of the method of election of the Councilmen of the City of Pensacola, Florida, as

shown by the returns certified to by the duly authorized Clerks and Inspectors of the said Election, and as a result of the said canvass, we do hereby certify that as a result of said Special Referendum Election, the following is the YES and NO vote:

DO YOU DESIRE THE CITY OF PENSACOLA TO CHANGE ITS PRESENT SYSTEM OF ELECTION FOR THE OFFICE OF COUNCILMAN OF THE CITY OF PENSACOLA BY REQUIRING COUNCILMEN TO BE ELECTED WITHIN THE CITY OF PENSACOLA AT LARGE?

YES	1722
NO	307
TOTAL VOTES CAST	2029

BOARD OF CANVASSERS
SPECIAL REFERENDUM
ELECTION OCTOBER 6, 1959

/s/
Chairman

/s/
City Attorney

/s/
City Clerk-Comptroller

/s/
Registration and Election Committee

Office of the
SECRETARY OF STATE
State of Florida
Tallahassee

March 1st, 1960

City of Pensacola
Attn: Mr. Chas. H. Walker
Director of Finance
Pensacola, Florida

Dear Mr. Walker:

I am in receipt of your letter of February 29th enclosing copy of Certificate of the Board of Canvassers showing results of the special referendum election held in the City of Pensacola, Florida, on October 6, 1959, in pursuance of the provisions of Chapter 59-1730, Laws of Florida, Acts of 1959.

This is to advise that this certificate has been duly recorded in this office in Municipal Charters Book IV, page 329, on March 1st, 1960.

Very truly yours,

/s/
Secretary of State.

/ch

RESOLUTION
No. 26-59

ADOPTED: AUGUST 20, 1959

A RESOLUTION TO BE ENTITLED:

A RESOLUTION PROVIDING FOR THE HOLDING OF A REFERENDUM ELECTION ON OCTOBER 6, 1959; DESIGNATING THE CLERKS AND INSPECTORS OF EACH ELECTION DISTRICT FOR THE HOLDING OF SAID ELECTION, WITH PROVISION FOR SUBSTITUTE OR ADDITIONAL CLERKS AND INSPECTORS: DESIGNATING THE POLLING PLACES IN EACH ELECTION DISTRICT PROVIDING FOR THE PUBLICATION OF SUCH LIST OF CLERKS, INSPECTORS AND POLLING PLACES: PROVIDING FOR THE COMPENSATION OF SAID CLERKS AND INSPECTORS: PROVIDING FOR THE COUNTING, CANVASSING AND CERTIFICATION OF THE RESULTS OF THE VOTES CAST IN SAID ELECTION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. That pursuant to the passage of 59-1730, Laws of Florida of 1959, a Special Referendum Election shall be held on Tuesday - October 6, 1959 to determine whether or not the composition of the City Council and the term of the Councilmen of the City of Pensacola shall be by a vote of all of the qualified electors of the City of Pensacola at large and to alter and amend the existing method of election for members of the City Council of the City of Pensacola. That there shall be one clerk and three inspectors of election and said clerks and inspectors of election are hereby named and designated and the following polling place in each election-district is hereby designated as follows:

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
	WARD NO. 1		
	PRECINCTS NO. 4, 40, 64, 73, 92, 93 and 96		
4	Belvedere Park Subdivision Office 3822 Creighton Road	CLERK INSPRS.	Mrs. Virginia Hoffmaster Mrs. J.A. Watson Mrs. R.M. Thompson Mrs. Jewell Williams
40	Bayview Park	CLERK INSPRS.	J.T. Mackey Mrs. W.R. Bicker Mrs. Tessie M. Suggs Mrs. T.H. Miller
64	Bayview Park	CLERK INSPRS.	Mrs. Annie Sheppard Mrs. Eva Hardy Mrs. M.L. Brown Mrs. Raymond E. Walker

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
73	Biddle's Garage 1810 E. Scott Street	CLERK INSPRS.	Mrs. E.W. Earps Mrs. J.B. Bates Mrs. Katherine Miller Mrs. Annabelle Glagola
92	B.D. Swain's Garage 1121 Barcia Drive	CLERK INSPRS.	Mrs. Ann Ellis Mrs. E.L. Barrineau Mrs. Mary Richardson Mrs. A.B. Yniestra
93	W.L. Hall's Office 4304 N. Davis St.	CLERK INSPRS.	Mrs. Warren Williams Mrs. Irene Eiland Mrs. C.E. Vallia Raymond Basly
96	Municipal Airport	CLERK INSPRS.	Mrs. Chas. H. Blanchard Mrs. John Stringfield Mrs. Thos. E. Herrin, Sr. Mrs. W.H. Abbott

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
	WARD NO. 2		
	PRECINCTS NO. 27, 28, 29, 30, 39, 49, 50, 51, 72 and 90		
27	Carl's Wee-Washit Laundry Strong and 9th Ave.	CLERK INSPRS.	Mrs. Carrie Brooks F.B. Mann Mrs. M.E. Morey W.H. Crawford
28	Harvell's Service Station Cervantes and 7th Ave.	CLERK INSPRS.	Mrs. Katie Borras Mrs. Stella Sheats Mrs. Lillie Cary Mrs. John Brown
29	City Public Works Dept. Guillemarde and Gonzalez Streets	CLERK INSPRS.	Mrs. Agnes Krammer Mrs. Pearl Carter Mrs. J.C. Connor Mrs. Maggie F. Brown

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
39	Sheffield's Garage 2011 N. Palafox St.	CLERK INSPRS.	Mrs. Guy H. Workman Mrs. Annie Avant Mrs. H.C. Haley Miss May D. Stokes
39	Mrs. Hughey's Residence Garage 14th Ave. and Lee St.	CLERK INSPRS.	Mrs. Eunice Hughey Mrs. Carmen Dove Mrs. Mary Swift Mrs. Bessie Eggart
49	Bryan Gilmore's Garage 2201 N. 8th Avenue	CLERK INSPRS.	Mrs. Bryan Gilmore Mrs. Mildred Nicholsen Mrs. E.T. Hayes F.B. King
50	Mrs. G.M. Henderson's Garage 912 E. Hatton Street	CLERK INSPRS.	Mrs. Doris L. Jernigan Mrs. G.M. Henderson Mrs. Annie Marie Steveson Mrs. Henry Holt

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
51	Myer's Garage 1615 E. Mallory Street	CLERK INSPRS.	Mrs. J.D. Myers Mrs. Margaret Noa Mrs. Jeanette O'Connell Mrs. Barton Pepper
72	Branchwood Grocery 15th Ave. and Maxwell	CLERK INSPRS.	Mrs. J.M. Armour Mrs. Dalmatia Jeudevine Mrs. W.M. Curtin Mrs. W.D. Brandon
90	Pickens School 2501 N. Hayne St.	CLERK INSPRS.	Mrs. Victoria Anderson Mrs. Etta Mitaite Mrs. Ethel Smiley Mrs. Eva Mae Miller

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
	WARD NO. 3		
	PRECINCTS NO. 12, 13, 26, 35, 42, 54 and 63		
12	Wehmeir's Paint Shop Intendencia and Alcaniz Streets	CLERK INSPRS.	Alex Bell Mrs. Anna Karlson Mrs. Rosie Lukers Mrs. Mrs. Dolan Thomley
13	Lewis' Radio and T.V. Service 612 E. Wright St.	CLERK INSPRS.	Mrs. Jessie Mefford Mrs. C.M. Thompson Mrs. Mike Mitchell Mrs. Fannie G. Nunez
26	Wilder's Garage 1601 E. Belmont St.	CLERK INSPRS.	J.R. Strawbridge Mrs. Ethel Oaks Mrs. Florence Brown Mrs. A.J. Ellis

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
35	Community Club House East Pensacola Hts.	CLERK INSPRS.	Mrs. Laureta Woodcock Mrs. Frances Barberi Mrs. B.D. Lewis Mrs. Juanita Bobe
42	Montanari's Service Station 9th Ave. and Wright Street	CLERK INSPRS.	Mrs. Jeanette Gonzalez Mrs. Daisy Roche Mrs. Dora Gathleny Mrs. Gasque Nix
54	Community Building Aragon Court	CLERK INSPRS.	Mrs. Eunice A. Hurd Mrs. Theresa A. Colley Mrs. Mattie Oglesby Mrs. Hubert Statam
63	McDaniel's Barber Shop 200 E. Fourth Street E. Pensacola Heights	CLERK INSPRS.	Mrs. Blanche Horne Mrs. Lennie Briggs Mrs. Daisy B. Richards Mrs. Nell Thompson

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
	WARD NO. 4		
	PRECINCTS NO. 2, 32, 38, 46, 56, 62, 75 and 76		
2	Vince-Whibbs Pontiac Co. 2716 W. Cervantes St.	CLERK INSPRS.	Mrs. Lula M. Kelley J.B. Clarke John G. Fell Mrs. Jessie Odom
32	Geo. S. Hallmark School 125 S. "E" Street	CLERK INSPRS.	Mrs. Margaret Solari Mrs. Viola Thorsen Mrs. Mollie Clancy Mrs. Henry J. Bowen
38	Corner Grocery Jackson and "L" Sts.	CLERK INSPRS.	Mrs. E.L. Cobb Mrs. H.L. Cobb Mrs. W.H. Frye Mrs. L.M. Chalker

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
46	Fireman's Hall 909 S. "J" Street	CLERK INSPRS.	Mrs. Dora Brady Mrs. L. Fell Mrs. Henry Mandel Mrs. D.E. Bowen
56	L. Johnson's Garage Gregory and "J" Sts.	CLERK INSPRS.	Mrs. Clara Johnson Mrs. R.H. Massey Mrs. Nellie Wright Mrs. Pete Engleman
62	Mrs. J.D. Feig's Garage 529 W. Mallory St.	CLERK INSPRS.	Mrs. Margaret Turnipseed Mrs. Ethel Feig Mrs. Jean Matroni Mrs. Elwood Gonzalez
75	Kiwanis Park 1821 W. Romana St.	CLERK INSPRS.	Mrs. Vivian Touart Mrs. Lucy Lane Mrs. Flora Bell Johnson Mrs. Norma E. Crooke

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
76	H.A. Berry's Residence 708 North "N" St.	CLERK	Mrs. Elsie Lowery
		INSPRS.	Mrs. L.C. Morgan
			Mrs. Effie H. Berry
			Mrs. Mabel Freundschuh

In case any of the above Clerks and Inspectors are unable to attend on the day of said elections or in case additional Clerks and Inspectors are needed in any of the polling places, the City Clerk-Comptroller is hereby authorized to obtain persons to fill said positions, which persons will be subject to the same rules and regulations as the persons herein above appointed. The City Clerk-Comptroller shall publish said list of Clerks and Inspectors and said designation of polling places in a newspaper published in the City of Pensacola at least once prior to said election.

SECTION 2. That there shall be submitted to all of the qualified voters, qualified in the last and for the last General Election of the City of Pensacola the following proposition:

DO YOU DESIRE THE CITY OF PENSACOLA TO CHANGE ITS PRESENT SYSTEM OF ELECTION FOR THE OFFICE OF COUNCILMAN OF THE CITY OF PENSACOLA BY REQUIRING COUNCILMEN TO BE ELECTED WITHIN THE CITY OF PENSACOLA AT LARGE?

YES _____

NO _____

SECTION 3. That the compensation of said Clerks and Inspectors in hereby fixed at $12.00 each, and the City Clerk-Comptroller be, and he is hereby directed to pay said compensation from the appropriation hitherto made for such purpose, and that no additional compensation shall be paid the Clerks and Inspectors for meals or transportation, which shall be furnished by the individual Clerk and Inspector.

SECTION 4. That the rental to be paid to the owner of each polling place or precinct shall be the sum of Ten ($10.00) Dollars, and the City Clerk-Comptroller, be, and he is hereby directed to make such payment from the appropriation hitherto made for such purpose.

SECTION 5. That said Clerks and Inspectors in each of said Election Districts shall conduct said election in accordance with Ordinance No. 13-53, and shall count the votes and certify the results thereof in accordance with said Ordinance. Said certificates shall be made in duplicate, one copy of which shall be delivered along with the official envelope by the Clerk and Inspectors to the City Clerk-Comptroller and the other copy shall be sealed and delivered to the Chairman or a member of the Canvassing Board, designated in Ordinance No. 13-53.

SECTION 6. That the Clerks and Inspectors shall maintain good order at the polling places and said polling places shall be policed by the Police Division of the City of Pensacola.

SECTION 7. At 10:00 o'clock A. M. on the day following the election, the Canvassing Board shall publicly proceed to canvass the votes given for the several offices and persons as shown by the returns on file with the City Clerk-Comptroller and the Chairman or Member of said Board as above provided.

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
	WARD NO. 5		
	PRECINCTS NO. 12, 13, 26, 35, 42, 54 and 63		
14	County Court House Annex Palafox and Government Sts.	CLERK	Mrs. R.B. Morrison
		INSPRS.	Mrs. Viola Rainer
			Mrs. Annie Roberts
			Mrs. Mary Louise Stewart
15	Escambia County Vocational School 215 W. Garden St.	CLERK	Mrs. Jeannette Nunnari
		INSPRS.	Mrs. Mary Crooke
			Mrs. C.F. Jones
			Mrs. Margaret Rowell
31	F.G. Wilson's Garage 319 W. DeSoto St.	CLERK	Mrs. Florence W. Zelius
		INSPRS.	Mrs. Evylin Price
			Mrs. Blanche S. Presley
			Mrs. F.G. Wilson

PRECINCT NUMBER	POLLING PLACE	CLERKS AND INSPECTORS	
34	Mandel's Grocery Coyle and Chase Sts.	CLERK INSPRS.	Mrs. Eva Wheat Mrs. Carrie Jones Mrs. Mamie Heinberg Mrs. Olga Carney
41	John Grace Sheet Metal Works 415 W. Government Street	CLERK INSPRS.	Mrs. Rosa Del Buono Mrs. Annie Burtt Mrs. Estelle Blanchard Mrs. Iva Walters
55	Mercury Grocery 423 N. DeVilliers St.	CLERK INSPRS.	Mrs. G.O.'Reilly Mrs. G.H. Baggett Mrs. Bernice P. Febro A.N. Anagnostou
74	W.A. Blount Jr. High School 113 North "C" Street	CLERK INSPRS.	Mrs. Ethel L. Bennie Mrs. Cecelia Boyden Mrs. Abbie Wimberly Mrs. E.M. Nell

SECTION 8. This Resolution shall be published and shall take effect immediately upon its adoption by the City Council.

Adopted: August 20, 1959

Approved:

/s/

E.P. McCullough
MAYOR. Pro Tem

Attest:

/s/

Chas. H. Walker
CITY CLERK–COMPTROLLER.

Legal in form and valid if adopted:

/s/

CITY ATTORNEY.

CITY OF PENSACOLA
CITY COUNCIL
RECORD OF ACTION

_____ 19____

SUBJECT _____

MOTION _____

	YES	NO
FUD THORNTON	X	
HENRY E. McLAUCHLIN	X	
T.P. O'GARA, JR.	X	
AL WOERNER	X	
EDWARD McCULLOUGH	X	
ROY S. PHILPOT	X	
JULIAN J. BANFELL	X	
KENNETH J. KELSON	X	
CHARLES D. HUMPHREYS	X	
CLYDE E. MILLER, JR.	X	

ACTION _____

NOTICE

MUNICIPAL SPECIAL REFERENDUM ELECTION

THE CITY OF PENSACOLA

OCTOBER 6, 1959

ON THE QUESTION – Do you desire the City of Pensacola to change its present system of election for the office of councilman of the City of Pensacola by requiring councilmen to be elected within the City of Pensacola at large?

(Pursuant to the passage of 59-1730, Laws of Florida 1959)

Chas. H. Walker
City Clerk Comptroller

LIST OF QUALIFIED XXXXX
BY PRECINTS & WARDS

WARD #1

	White	Colored	
#4	91	0	91
#40	243	0	243
#64	466	0	466
#73	476	0	476
#92	513	1	514
#93	369	0	369
#96	495	0	495
	2,653	1	2,654

WARD #2

	White	Colored	
#27	305	0	305
#28	122	223	345
#29	54	183	237
#30	336	12	348
#39	364	0	364
#49	143	244	387
#50	349	26	375
#51	269	0	269
#72	237	34	271
#90	0	308	308
	2179	1,030	3,209
	67.9	– 32.1	

WARD #3

	White	Colored	
#12	137	19	156
#13	176	91	267
#26	254	0	254
#35	308	0	308
#42	172	39	211
#54	174	31	205
#63	225	0	225
	1,446	180	
	88.9	– 11.1	

WARD #4

	White	Colored	
# 2	45	0	45
#32	178	44	222
#38	119	61	180
#46	164	1	165
#56	362	4	366
#62	198	83	281
#75	217	3	220
#76	35	171	206
	1,308	367	1,685
	78.1	– 21.9	

WARD #5

	White	Colored	
#14	172	3	175
#15	138	19	157
#31	234	184	418
#34	197	15	212
#41	84	49	133
#55	85	149	234
#74	163	208	371
	1,073	627	1,700
	63.1	– 36.9	

TOTAL:

8,659	2,205	10,884
79.7	– 20.3	

CITY ELECTION
POLLING PLACES

Here is a list of polling places for Tuesday's referendum on whether to change the method of electing City Council members:

WARD ONE

Precinct 4, Belvedere Park Subdivision Office, 3522 Creighton Rd.

Precinct 40, Bayview Park.

Precinct 64, Bayview Park.

Precinct 73, Biddle's Garage, 1816 E. Scott St.

Precinct 92, B. D. Swain's Garage, 1121 Barcia Dr.

Precinct 93, W. L. Hall's office, 4304 N. Davis St.

Precinct 96, Municipal Airport.

WARD TWO

Precinct 27, Carl's Wee-Washit Laundry, Strong Street and 9th Avenue.

Precinct 28, Harvell's Service Station, Cervantes Street and 7th Avenue.

Precinct 29, City Public Works Department, Guillemard and Gonzalez Streets.

Precinct 30, Sheffield's Garage, 2011 N. Palafox St.

Precinct 39, Mrs. Hughey's garage, 14th Avenue and Lee Street.

Precinct 49, Bryan Gilmore's garage, 2201 N. 8th Ave.

Precinct 50, Mrs. G. M. Henderson's garage, 212 E. Halton St.

Precinct 51, Myer's Garage, 1615 E. Mallory St.

Precinct 72, Branchwood Grocery, 15th Avenue and Maxwell Street.

Precinct 90, Pickens School, 2501 N. Hayne St.

WARD THREE

Precinct 12, Wehmeter's Paint Shop. Intendencia and Alcaniz Streets.

Precinct 13, Lewis' Radio and TV Service, 612 E. Wright St.

Precinct 26, Wilder's Garage, 1001 E. Belmont St.

Precinct 35, Community Club House, East Pensacola Heights.

Precinct 42, Montanari's Service Station, 9th Avenue and Wright St.

Precinct 54, Community Building Aragon Court.

Precinct 63, McDaniel's Barber Shop. 200 E. Fourth St. East Pensacola Heights.

WARD FOUR

Precinct 2, Vince-Whibbs Pontiac Co., 2716 W. Cervantes St. (formerly at Crabtree's Garage, 2101 W. Cervantes St.)

Precinct 37, Hallmark School 125 South H St.

Precinct 38, Corner Grocery, Jackson and L Streets.

Precinct 46, Fireman's Hall, 903 South J Street.

Precinct 56, L. Johnson's garage, Gregory and J Streets.

Precinct 62, Mrs. J. D. Feig's garage, 529 W. Mallory St.

Precinct 75, Kiwanis Park, 1821 W. Romana St.

Precinct 76, H. A. Berry's residence, 708 North N St.

WARD FIVE

Precinct 14, County Courthouse Annex, Palafox and Government Streets.

Precinct 15, Escambia County Vocational School, 215 W. Garden St.

Precinct 31, F. G. Wilson's garage, 319 W. DeSoto St.

Precinct 34, Mandel's Grocery, Coyle and Chase Streets.

Precinct 41, John Grace Sheet Metal Works, 415 W. Government Street.

Precinct 65, Mercury Grocery, 423 N. DeVilliers St.

Precinct 74, W. A. Blount Junior High School, 112 North C St.

Office of the
SECRETARY OF STATE
State of Florida
Tallahassee

March 1st, 1960

City of Pensacola
Attn: Mr. Chas. H. Walker
Director of Finance
Pensacola, Florida

Dear Mr. Walker:

I am in receipt of your letter of February 29th enclosing copy of Certificate of the Board of Canvassers showing results of the special referendum election held in the City of Pensacola, Florida, on October 6, 1959, in pursuance of the provisions of Chapter 59-1730, Laws of Florida, Acts of 1959.

This is to advise that this certificate has been duly recorded in this office in Municipal Charters Book IV, page 329, on March 1st, 1960.

Very truly yours,

/s/
Secretary of State.

/ch

CERTIFICATE OF THE BOARD OF CANVASSERS FOR THE SPECIAL REFERENDUM ELECTION HELD ON TUESDAY – OCTOBER 6, 1959

We, the undersigned Board of Canvassers designated to canvass the returns of the Special Referendum Election held in the several Election Districts of The City of Pensacola, Florida, on TUESDAY, OCTOBER 6, 1959, as required by the provisions of RESOLUTION NO. 26-59, adopted August 20, 1959, being a resolution "Providing For The Holding Of The Referendum Election", on October 6, 1959, to determine if all analysis of the City Council should be elected by the city at large, do hereby certify that we did on the 8th day of October, 1959, publicly proceed to canvas the votes cast at said Special Referendum Election for the determination of the method of election of the Councilmen of the City of Pensacola, Florida, as shown by the returns certified to by the duly authorized Clerks and Inspectors of the said Election, and as a result of the said canvass, we do hereby certify that as a result of said Special Referendum Election, the following is the YES and NO vote:

DO YOU DESIRE THE CITY OF PENSACOLA TO CHANGE ITS PRESENT SYSTEM OF ELECTION FOR THE OFFICE OF COUNCILMAN OF THE CITY OF PENSACOLA BY REQUIRING COUNCILMEN TO BE ELECTED WITHIN THE CITY OF PENSACOLA AT LARGE?

YES	1722
NO	307
TOTAL VOTES CAST	2029

BOARD OF CANVASSERS
SPECIAL REFERENDUM
ELECTION OCTOBER 6, 1959

/s/
Chairman

/s/
City Attorney

/s/
City Clerk-Comptroller

/s/
Registration and Election
Committee

CHAPTER 59-1730

(House Bill No. 2418)

AN ACT RELATING TO THE CITY OF PENSACOLA, PROVIDING FOR THE CREATION, COMPOSITION, TERM, VACANCIES AND QUALIFICATIONS AND METHOD OF ELECTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA; AND AMENDING CHAPTER 15425, LAWS OF FLORIDA, SPECIAL ACTS OF 1931; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE HOLDING OF A REFERENDUM OF THE QUALIFIED VOTERS OF THE CITY OF PENSACOLA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

SECTION 1. That Section 4 of Chapter 15425, Laws Of Florida, Special Acts of 1931, be, and the same is hereby amended to read as follows:

SECTION 4. COUNCIL CREATION; COMPOSITION; TERM; VACANCIES; QUALIFICATIONS.

Except as otherwise provided in this Charter, all powers of the city shall be vested in a council of ten (10) members, two (2) from each of five (5) wards into which the city is divided by this act, both of whom shall be resident qualified voters within the ward, both elected by the qualififed voters of the city at large in the manner hereinafter provided in this act or otherwise provided by amendments to this act or by special act of the legislature. Within each ward of the City of Pensacola one (1) councilman shall be designated as the representative of Group I of said ward and the other and remaining councilman shall be designated as the representative of Group II of said ward, and all candidates offering themselves for election to the office of Councilman shall designate which group

he or she shall represent and shall be a candidate for said representative as a member of the City Council of the City of Pensacola. The term of each member of the council shall be for two years and shall begin on the second Monday of June, except as hereinafter provided for the council chosen at the first election, next following their election. If a vacancy occur in the council, it shall be filled for the unexpired term of such member by a majority of the remaining councilmen, and such vacancies shall be filled within ten (10) days after such vancancy occurs. Members of the council shall be qualified electors of the city and shall not hold any other office, except that of notary public or member of the state militia. A member of the council ceasing to possess any of the qualifications specified in this section, or convicted of crime, while in office, shall immediately forfeit his office.

30 April 59

COUNCIL ENDORSES PROPOSED CHANGES

Legislation Lifts Ad Valorem Limits

By Paul Jasper

Pensacola City Council this morning unanimously endorsed proposed legislation which would create extensive changes in the operation of the city government.

One bill would be to abolish the monetary limitation the city now has on ad valorem taxes.

Under the present set-up, the city can only collect some $500,000 per year on property taxes but under the new bill this restriction would be removed.

They also voted to unanimously oppose a change in the millage limitation from 10 mills to five mills. A Chamber of Commerce committee has suggested that the five mill limitations be imposed. The city officials want to keep it at 10 mills.

They also approved a change in the city charter which would allow all candidates for the City Council to run at-large instead of from individual districts and to elect two councilmen from each district.

Councilmen in the districts would run in groups with one man elected from each group.

The charter amendment would also increase councilmen's salaries from $5 a month to $100 a month and the Mayor's salary from $100 to $200 a month and the Mayor's salary from $100 to $300 a month if he is also a councilman. on oc-

(Turn to COUNCIL – Page 2A)

Editorials Page 4 Wednesday, May 6, 1959

TEN CITY WARDS ARE PROPOSED FOR MUNICIPAL COUNCIL

Pensacola City Council has approved several suggested legislative changes in the charter which would affect the city's financial affairs and also the membership of that governing body. One of the more interesting is that which would require all members of the council to run at large, replacing the present system whereby one from each ward is chosen at large and the second by the voters of the ward involved.

City wide elections we believe, would have a beneficial effect. We advocated for years the similar county wide selection of commissioners, thus requiring incumbents to labor for the welfare of the entire community, rather than for the restricted district he represented. In Escambia the results have been praiseworthy. They should be for the city as well.

Since the council is considering this change in electing its membership a companion proposal should be worthy of consideration. The present 10-member council appears to be the ideal workable size, large enough to include the varied views of a comprehensive body, yet not so large as to be unwieldy.

But why should the entire city select two members from each ward who conceivably may have the same views and interests and reside in the same block? Would it not be wiser to re-divide the city into 10 wards, instead of the present five, thus creating a wider dispersal of the council's membership and resulting in a more accurate representation of the various residential, commercial and industrial sectors of the municipality?

Pensacola is growing and apparently will continue to grow at an outstanding rate in area, population and the

variety of its activities. It was not always so. All of these factors were quite limited at the time the city was divided into five wards, roughly comparable, population-wise. Corrective revisions in the boundaries have been made from time to time and today the wards are quite large and the population interests varied.

A further subdivision into 10 wards, each represented by one councilman who understands its needs and interests would provide a much more diversified city body. The requirement that city-wide approval of each member must be obtained would nullify any fears that a local popular but obviously incompetent person would be chosen.

The wider dispersal of council membership probably would provide a stronger inducement for many of the existing suburban communities to merge with the city since it would be evident that their chances of getting an adequate voice in the city's direction would be enhanced.

Sept. 10, 1959

Oct. 6 Question

CITY-WIDE VOTE FOR COUNCILMEN?

By Maurice Harling

Should the city charter be changed so that all 10 members of the Pensacola City Council will be elected by a citywide vote?

This is the question which the more than 10,500 registered voters in the City of Pensacola are to decide at a special city election to be held on Oct. 6.

Polls will be open in each of the 39 precincts within the city. Those who were registered with the city at the time of the city elections last May are eligible to vote.

The proposal provides the following system:

1—The city shall be divided into five wards—the same as at present.

2—Two members of the council are to be elected from each ward. They must be residents and qualified voters in the ward for which they are candidates.

3—Candidates from each ward will qualify for election from either Group 1 to Group 2.

4—Voters from the entire city will vote for candidates in both groups in each of the five wards. (In other words all 10 councilmen will be elected by a city wide vote with two being elected from each ward.)

Under the present system the city is divided into five wards. One candidate from each of the five wards is elected by a city-wide vote. Then each of the five wards elects a councilman with only those residing in a ward voting for the candidate "from within" that ward.

As a result under the present system out of a total of 10

councilmen, five are elected by citywide voters and five are elected from within wards (one from each of the five wards.)

The present system has been in effect since 1931. That was the year the legislature passed the law to provide a charter for a city manager type of government for Pensacola. The charter did not become effective, however, until approved at a special election.

The legislature during the last session passed the law to provide for changing the system so all 10 councilmen would be elected at large. The bill provided, however, that the new system could not go into effect unless approved by the voters of the city. The bill also provided the election must be held within six months after it was approved in the governor's office, which was June 30.

The members of the city council last March requested the three local members of the legislature, Sen. Philip D. Beall, Rep. George Stone and Rep. Reubin O'D. Askew, to pass the bill to provide for electing all 10 members of the council by a citywide vote. The legislators agreed but said as this changes the basic law of the city, the charter, that the people should approve any such change before it becomes effective. That is the reason for the election.

Another organization which endorsed the legislation for making the change was the Greater Pensacola Chamber of Commerce.

Up to the time there has been little campaigning concerning the election. It is known that a few who oppose it are quietly contacting personal friends in an effort to get them to go to the polls and defeat the change.

Proponents of the change say that because all business conducted by the council affects the entire city, then the 10 councilmen should be elected citywide.

Opponents reply that the present system is more

satisfactory as each ward is now represented by a person who is elected citywide and therefore considers business from the standpoint of the entire city, while the councilmen elected from within the wards can "look out" for the interests of the people of that ward.

Proponents contend that the system of electing county commissioners by a countywide vote instead of by districts has proven a success in that commissioners consider business on a basis of the entire county instead of individual districts. This eliminates considerable maneuvering.

Opponents reply that under the citywide system voters of an entire city could elect a councilman from a ward which the voters of that ward do not want to represent them.

Proponents say that since councilmen now receive a salary of $100 plus $25 per month expenses that those who serve and receive their pay from taxes paid from the entire city should be elected by voters of the city. Opponents contend the councilmen earn the same salary whether elected within wards or by voters of the entire city.

Proponents contend a higher class of candidates will qualify under the citywide system while opponents contend that will make no difference.

SUNDAY, SEPTEMBER 13, 1959

Councilmen Should Face City-Wide Voter Choice

PENSACOLA VOTERS face three elections in the next two months. The first, on Oct. 6, deals with a change in the city charter to require election of all city councilmen by ity-wide vote.

The second date is Nov. 3. Then a state-wide election on the reapportionment amendment will be combined with a county school millage and trustee election and a referendum on whether commercial fishing shall be prohibited in Davenport Bayou.

The closest in point of time and perhaps greatest in local interest is the city referendum on the charter change. Since the charter was adopted in 1931 the ten councilmen have been elected from five wards, two from each ward. One of the two is chosen entirely by voters within the ward, the other by voters from the whole city.

The proposal would change that plan so that all ten councilmen would be elected by all city voters, though each ward would still have two representatives. In other words a councilman now chosen by only those in his ward would have to win favor throughout the municipality.

This would be an advantageous change for at least two reasons. One reason is that small groups which might dominate one ward could not choose a councilman. Thus one ward might conceivabley elect a Negro councilman, although the city as a whole would not. This probably is the prime reason behind the proposed change.

However, the best argument for the change, the one which we offer, is that all councilmen would be responsible to all city voters, not merely to those in their particular section. Councilmen should have a city-wide viewpoint, not a localized outlook.

We favored such representation in the county, both for school board members and for county commissioners. Prior to the Minimum Foundation Law, school board members were chosen by districts, equivalent to city wards. This change was helpful as it widened horizons and banished petty district politics. A vote in Century became as important as a vote in Pensacola.

Later, the News Journal attempted by legislation to have county commissioners elected county-wide, instead of by districts, because the district plan made each commissioner more concerned with his district while roads and other problems crossing district lines were neglected. Legislation failed, but a suit brought by citizens resulted in the Supreme Court deciding the district election was invalid. Now commissioners over the state are chosen by county-wide vote and we think it has resulted in great improvement.

Therefore, the same principle should apply to city councilmen. Our ten municipal directors should be persons who consider the total welfare of the city. The charter change would insure that quality.

ALL CAN HAVE RIGHT TO VOTE ON TEN CITY COUNCILMEN

Oct. 6, 1959

Do you want to have a say as to all of the ten councilmen who direct the affairs of Pensacola?

If so you had better go to the polls today and cast your ballot for the proposed change in the city charter which will give you that privilege.

At present you vote on only six of the ten councilmen. You vote on five of those running at large and one in your own ward.

If the proposed change is approved by you and others like you, you will have the opportunity to vote on all ten of the councilmen.

We believe it is better for all of the people to have a say in the election of all the councilmen, rather than being restricted to just six of them. In many instances eight votes are necessary to enact a measure.

This proposal does not mean that all sections of the city would not be represented on the council. Each ward, approximately one fifth of the population, still would have two representatives on the council.

Councilmen would have to qualify from one of the five wards as they do now. There would be no chance of one section of the city having more councilmen than another. But each section would have a vote as to who those representatives from another section would be.

This is the better way, for each councilman votes on matters which are of vital importance to all of the city, not to his own ward only. If councilmen think merely of their own sections of the city and disregard the needs of other sections we cannot have a sound, well developed municipality.

With everyone in the city voting for all councilmen, neither could some group which represents a minority in the city but which constitutes a majority in one ward dominate a ward election.

Every city councilman should have the welfare of all of the people and all of the city at heart. See that we have such councilmen by taking the few minutes required to visit your polling place today and pull the lever for city-wide election of all councilmen.

ELECTION CHANGE SOUGHT Oct. 6, 1959

CITY GOES TO POLLS TODAY

Proposed Plan Would Abolish 'Within' Vote

All Ten Councilmen Would be Elected
On City-Wide Basis
(See precincts on page 5A)

Pensacolians will decide Tuesday whether to elect all members of future City Councils by a city-wide vote or to continue the present system.

Two councilmen will be elected from each ward as in the past if the new system is adopted. But all voters in the city will cast ballots for all candidates. Voters within a ward elect one of the councilmen from that ward under the present system. The other runs at large.

If the new system is approved, 10 councilmen will be elected by all voters. At present, five members are elected by all voters and five by voters in the five separate wards.

Polls will be open from 7 a.m. to 7 p.m. Tuesday. About 11,000 persons are eligible to vote.

All taverns and liquor stores in the city will remain closed during voting hours. No alcoholic beverages will be sold inside the city until after 7 p.m.

The present Council requested the 1959 Florida Legislature to change the form of electing city councilmen in Pensacola. The Escambia County legislative delegation sponsored the request in the Legislature.

The Legislature approved the move, subject to approval by the voters of the city.

30 April 1959

Council Endorses Proposed Changes

Legislation Lifts
Ad Valorem Limit
By Paul Jasper

Pensacola City Council this morning unanimously endorsed proposed legislation which would create extensive changes in the operation of the city government.

One bill woudl be to abolish the monetary limitation the city now has on ad valorem taxes.

Under the present set-up, the city can only collect some $500,000 per year on property taxes but under the new bill this restriction would be removed.

They also voted to unanimously oppose a change in the millage limitation from 10 mills to five mills. A Chamber of Commerce committee has suggested that the five mill limitation be imposed. The City officals want to keep it at 10 milss.

They also approved a change in their charter which would allow all candidates for the City Counicl at-large instead of from individual district and to elect two councilmen from each district.

Councilmen in the districts would run in groups with one man elected from each group.

The charter amendment would also increase councilmen's salaries from $50 a month to $100 a month and the Mayor's salary from $100 to $200 a month and the Mayors' salary from $100 to $300 a month if he is also a councilman. On oc-

(next p.)

CITY-WIDE ELECTION OF COUNCIL GIVEN AP

2,029 Voters Decide Issue, 19722 to 307

Votes Wipes Out Present Within, At Large System

Pensacolians decided overwhelmingly Tuesday to elect all 10 City Council members by city-wide vote.

The margin was 1,722 to 307.

The landslide wiped out the present voting system of five councilmen being elected by a city-wide vote and five by voters in each of the separate five wards.

Those who favored the new system hailed it as assuring a high-caliber Council.

The change was requested by the Council itself last year, was passed by the state Legislature and put to a referendum to become effective.

First use of the new system will be in the 1961 city election when all 10 City Council posts will be up for grabs.

Tuesday's total vote of 2,029 surpassed pre-election expectations.

It fell far short of the number that could have turned out, however, with 10,874 persons eligible.

All except one of the city's 30 precincts voted in favor of the change.

Precinct 80, a predominantely Negro area around the J. Lee Pickens School, cast 10 votes against the change and 7 for.

The issue wasn't even close in the other precincts.

Even though all councilmen will be elected by a city-

wide vote. There still must be two from each ward, as at present.

PLAINTIFF EXHIBIT No. 66

County Boards & Committees

	Name	White	Black
1.	Airport Zoning Ordinance Commision	14	-
2.	Housing for Ambulance Service	5	-
3.	Board of Adjustments & Appeals for Sow. Std. Building Code	6	1
4.	Board of Adj. & App. for Subd. Regulations	5	-
5.	Boating Improvement Program	15	-
6.	Community Schools Concept Committee	5	-
7.	Construction Industry Competency Bd.	12	-
8.	Courthouse Renovation Committee	5	-
9.	Damage Survey Team	5	-
10.	Electrical Examiner Board	3	-
11.	Electrical Code Committee	5	-
12.	Emergency Medical Services Advisroy Council	25	1
13.	Flood Plain Management	6	-
14.	Gas Examiners Board	4	-
15.	County Health Facilities Authority	4	1
16.	Gulf Islands National Seashore	2	-
17.	Juvenile Justice Committee	8	-
18.	Comprehensive Land Use Plan	10	-
19.	Land Use Regulations Comm.	5	-
20.	Landfill Site Acquisition	5	-
21.	Land Use Study Committee	10	-

County Boards & Committees

Name	White	Black
22. Lot Coverage Board of Review	5	-
23. Manpower Advisory Committee	14	7
24. O.E.D.P. Committee	15	2
25. 911 Committee	16	-
26. PUATS Task Force Committee	13	-
27. Plumbing Code Committee	3	-
28. Plumbing Exam. & Control Board	6	-
29. Santa Rosa Island Authority	5	-
30. Expansion of Sheriff's Authority	9	-
31. Subdivision Regulations Review Board	11	-
32. Tourist Development Council	9	-
33. Youth Advisory Council	30	8
34. Bikeways Coordinating Committee	14	-
35. Charter Government Study Commission	4	1
36. Budget and Finance Advisory Committee	21	2
37. PUATS Citizens Advisory Committee	23	-
38. PUATS Policy Committee	12	-
39. PUATS Technical Committee	26	-
	395	23

EXHIBIT 70 Excerpt
1976-77 Annual Budget of Escambia

ESCAMBIA COUNTY, FLORIDA

MILLAGE RATE BY FUND AND ASSESSED VALUE FOR FISCAL YEAR ENDING SEPTEMBER 30, 1977
With Comparative Amounts For 1975 and 1976

	Millage 1974-75	Millage 1975-76	Millage 1976-77
General Fund	4.72	4.89	6.71
Road Fund	1.64	1.83	1.13
Health Fund	.36	.36	.38
Hospital Fund	.88	.47	1.76
Total Millage	7.60	7.55	9.98

	1975	1976
COUNTY		
Real Estate	$1,202,447,939	$1,291,097,909
Personal Property	424,495,700	447,125,400
Railroads and Telegraph	10,801,130	11,847,808
TOTAL (City Included)	$1,637,744,769	$1,750,071,117
CITY OF PENSACOLA		
Real Estate	$ 297,990,741	$ 305,032,368
Personal Property	97,965,950	102,282,810
Railroads and Telegraph	2,932,338	1,962,199
TOTAL	$ 398,889,029	$ 409,277,377
Downtown Improvement Fund District - Real Estate	$ 35,360,230	$ 35,766,856
CITY OF SOUTH FLOMATON		
Real Estate Estate	$ 1,009,170	$ 1,015,710
Personal Property	738,300	758,010
Railroads and Telegraph	161,626	176,115
TOTAL	$ 1,909,096	$ 1,949,835

POPULATION	1975	1976
Population of County - Outside Cities	173,284	173,284
Population of City of Pensacola	60,705	60,705
Population of City of South Flomaton	465	465
	234,454	234,454

EXHIBIT 71

SUMMARY ANALYSIS (County Recreation)

BLACK	36.6	Acres
WHITE	363.30	Acres
MIXED	217.14	Acres

ATTACHMENT I. Legends

* Legend:

A – Active – organized recreation program
P – Passive – no organized recreation program

** Legend:

1. Single letters denotes one of specified items.
2. Letter with number, A[2], denotes the number of items.

A. Baseball Field – youth
B. Baseball Field – adult
C. Baseball Field – practice
D. Softball Field – youth
E. Softball Field – adult
F. Football Field – suitable for competition
G. Football Field – practice
H. Basketball Court – clay
I. Basketball Court – hard surface (asphalt or concrete)
J. Tennis Court – clay
K. Tennis Court – hard surface (asphalt or concrete)
L. Merry-Go-Round
M. Swing Set
N. Climber
O. Slide

P. Picnic Table and/or Bench
Q. Picnic Pavillion
R. Bar-B-Q Grill
S. Camp Site – primitive
T. Camp Site – Electricity and water available
U. Sanitary Dumping Station
V. Horse Arena – rodeo or western
W. Horse Arena – English
X. Horse Arena – jumping
Y. Boat Ramp – freshwater
Z. Boat Ramp – salt water
RR – Rest Rooms
RC – Recreation Center
CS – Concession Stand

*** Maintenance Cost

Maintenance cost is not broken down to individual park. Salaries, supplies, tools, maintenance equipment, and all other necessary costs are used for maintenance of all parks. Listed below is the total budget for the Escambia County Parks and Recreation Department for the past three years.

	County Funds	Revenue Sharing
1974-75	$138,793.00	$200,000.00
1975-1976	$121,835.00	$ 50,000.00
1976-1977	$ 85,796.00	$ 0.

ESCAMBIA COUNTY, FLORIDA
ANNUAL BUDGET 1976-77

ANALYSIS OF EXPENDITURES BY FUNCTION AND PROGRAM			**DIVISION OF EXPENDITURES FROM LOCALLY RAISED RECEIPTS BETWEEN INCORPORATED AND UNINCORPORATED AREAS OF THE COUNTY			
	Amount	Percent of Budget	Unincorporated Area of County	City of Pensacola	City of South Flomaton	Not Applicable
General Government						
Legislative & Administrative	$ 2,091,301	5.23	$ 1,204,939	$ 422,079	$ 3,261	$ 461,022
Finance & Taxation	1,736,110	4.34	1,000,401	350,433	2,707	382,569
Judicial	8,263,751	20.66	4,761,711	1,667,985	12,885	1,821,170
Elections	295,281	.74	170,030	59,560	460	65,231
Service Departments	809,515	2.02	466,708	163,484	1,261	178,062
Building Maintenance	529,768	1.32	305,551	107,033	826	116,358
Planning & Development	336,274	.84	193,811	67,892	525	74,046
Other General Government	437,844	1.10	251,944	88,253	682	96,965
Public Safety						
Police Protection	$ 4,497,866	11.25	$ 2,591,420	$ 907,751	$ 7,012	$ 991,683
Fire Control	11,847	.03	6,801	2,382	19	2,645
Corrections	880,132	2.20	507,173	177,658	1,372	193,929
Protective Inspection	283,577	.71	163,334	57,215	442	62,586
Other Protection	544,377	1.36	313,744	109,901	849	119,883

ANALYSIS OF EXPENDITURES BY FUNCTION AND PROGRAM			**DIVISION OF EXPENDITURES FROM LOCALLY RAISED RECEIPTS BETWEEN INCORPORATED AND UNINCORPORATED AREAS OF THE COUNTRY			
	Amount	Percent of Budget	Unincorporated Area of County	City of Pensacola	City of South Flomaton	Not Applicable
Public Works						
Road & Construction						
Maintenance	$ 2,546,269	6.37	$ 1,466,933	$ 513,853	$ 3,970	$ 561,513
Sanitation	676,838	1.69	390,145	136,664	1,056	148,973
Health, Welfare & Social Services						
Health	$ 4,227,196	10.57	$ 2,435,671	$ 853,193	$ 6,591	$ 931,741
Welfare	1,528,145	3.82	880,574	308,457	2,383	336,731
Economic Assistance	1,892,717	4.73	1,090,741	382,076	2,952	416,948
Other Health, Welfare & Social Services	1	–	1	–	–	–

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements Since 1950		Maintenance & Program Cost-Federal Funding 1974-1977
								County Funds	Federal Funds	
Acro Vista Park Picnic Tables Marine Drive and Milton Road Warrington	0.7	0	0	P	Platted 1946	Slide		0	0	0
Ashton Brosnaham Recreation Center Picnic Tables	109.04	0	1 Caretaker (Contractual Agreement)	P	Deeded By U.S. Gov.	Horse-Rodeo V,W,X,Q		$2,276.00	$66,200.00	0
Avondale Park	7.78	0	0	P	Leased from City ($1.00 per Year 1973	Merry Go Rn L,M(2),N,P,C Bsebl pract TBL Swing Climb Picnic		$1,402.00	0	0
Baars Field (Operated by Gulf Beach Recreation Association)	20.00	0	0		1921	Footbl, Basebl G,C(2),A(2),RR, CS,M(2),N,P Rest Rm Swing Concessn Stand		$4,448.00	$ 5,757.00	0
Bayou Marcus Heights	2.00	0	0	P	Platted 1954	Slide 0		0	0	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements Since 1950		Maintenance & Program Cost-Federal Funding 1974-1977
								County Funds	Federal Funds	
Bluff Springs Public Park	2.00	0	0	P	Platted 1904	0		0	0	0
Bratt Middle School	1.0	0	0	P	Owned by School Board "Community School" 1976	K Tennis Court		0	$ 3,239.00	0
Brent Park (Leased to Brent Recreation Association)	20.0	0	0		1926	F,A(4),D,C(4) M,P(2),CS(2) RR(4)		0	0	0
Brentwood Park	5.00	0	0	P	Platted 1926	K,M,N,C,H		$ 830.00	$11,000.00	0
Campbell Landing	1.00	0	0	P	Donation 1976	Boat Ramp Y		$ 500.00	0	0
Cantonment/Ensley Jaycee Park (Santa Maria Plaza) Operated by Cantonment/Ensley Jaycees	5.00	0	0		Platted 1924	Concessn Stand Rest Rm SoftBl CS,RR,E.		By Donation	0	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements since 1950		Maintenance & Program Cost-Federal Funding 1974-1977
								County Funds	Federal Funds	
Carver Middle School	3.00	0	0	P	Owned by School Board "Community School" 1976	C Basebl practice		$ 150.00	0	0
Carver Park	2.00	0	0	P	Platted 1943	Swing Climber M(2),L,N,O,P Slide Picnic TBL Merry Go Rn		$4,333.00	$ 303.00	0
Century Elementary School	2.00	0	0	P	Owned by School Board "Community School" 1976	K Tennis Court		0	$11,000.00	0
Charbar Lake Park	2.00	0	0	P	Leased from City ($1.00 per year) 1976	0 Slide		0	0	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements Since 1950		Maintenance & Program Cost Federal Funding 1974-1977
								County Funds	Federal Funds	
Chimes Way	5.00	0	0	P	Platted 1926	Baschl Pract C(2)		0	0	0
Civitan Park (leased to Warrington Civitan Club)	2.00	0	0		Platted 1933	Recreation Cntr Foothl Pract RC,G,M,N,O Swing	0	By Donation	0	0
Corry Park #2	1.00	0	0	P	Platted 1940	0		0	0	0
Corry Park #1	2.00	0	0	P	Platted 1940	Merry Go Rnd Swing Slide L,M,O,P Picnic		By Donation $ 100.00	0	0
Country Club Estates	1.50	0	0	P		O Slide		0	0	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements Since 1950		Maintenance & Program Cost Federal Funding 1974-1977
								County Funds	Federal Funds	
Don Sutton Recreation Park (Operated by Molino Recreation Association)	5 Acres County 15 Acres leased from State DOT 15.000	0	0		0 1972	G,A,CS,RR,M, N,O,P Footbl pr Basebl Cnces Stn Rest Rm Swing Climber Picnic		$4,970.00	0	0
Dottie Miller Park (Operated by DEPT. of Human Resources	5.00				Platted 1945	I,M,N,O,RC, C,J,I Rec Cntr Merry Go Rn Slide Swing Bask Bsebl Tenn		$ 75.00	$13,600.00	0
Elmer Grimsley Park Barrington Elementary School	7.00	0	0		Owned by School Board "Community School" 1976	Tennis Court K		0	$11,000.00	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements Since 1950		Maintenance & Program Cost-Federal Funding 1974-1977
								County Funds	Federal Funds	
Englewood Park (Operated by the Dept. of Human Resources	5.00	0				RC',M(2),L, N,1 Climber Swing Basket Merry Rec Cntr		$ 4,309.00	0	0
Escambia Park	4.00	0	0	P	$26,500 ? 1975	O Slide		0	0	0
Fairfield Park	1.30	0	0	P	Platted 1958	O		By Donation	0	0
Forest Park	0.12	0	0	P	Platted 1955	O		0	0	0
Forte Estates	2.00	0	0	P	Platted 1959	O		0	0	0
Galvez Landing (Gulf Beach Heights)	2.00	0	0	P	Platted 1921	Boat Ramp Z(2)		(State) $17,700.00	0	0
Harvesters Homes Park	0.6		0	P	Platted 1953	Merry Go Rn L,M Swing		By Donation	0	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements since 1950		Maintenance & Program Cost-Federal Funding 1974-1977
								County Funds	Federal Funds	
Heritage Park	3.00	0	0	P	Leased from Heritage Church 1976	Basebl youth A,M,N,L Swing Climber Merry Go Rn		$ 690.00	$ 364.00	0
Lake Stone	204.94	0	0 Caretaker Contractual Agreement	P	1968	Foothl Pract Camp Site T(78)P(15), G,M,N,O,RR, K,Y climb swing	Tennis Slide Restm Boat	$25,087.00	$ 6,370.00	0
Lakewood Park	1.50	0	0	P	Platted 1949	O		0	0	0
Laurel Park	3.00	0	0	P	Platted 1958	O		0	0	0
Lincoln Park	5.00		0	P	1971	I,M,N,O swing Basktbl Slide Merry Go Rn		$ 4,752.00	0	0
Magnolia Park (Leased to Ensley Lions Club) to	1.00	0	0	P	Platted 1905	M(2),O,P(4)N Merry			By Donation	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements since 1950		Maintenance & Program Cost-Federal Funding 1974-1977
								County Funds	Federal Funds	
Mayfair Park #2	1.00	0	0	P	Platted 1954	O		0	0	0
Mayfair Park #1	10.00	0	0	P	1956	C(3),M(2),N,O,I Basebl Swing	Slide Merry	$1,278.00	0	0
Fallview Boat Ramp	0.2		0	P	State IDOT R/W	Y(1)	Boat Ramp	0	0	0
Meadowbrook Park #2	0.9	0	0	P	Platted 1955	N	Climb	0	0	0
Minnehaha Park and Community Playground	1.3	0	0	P	Platted 1926	O	Slide	0	0	0
Molino Town Park	2.0		0	P	Platted 1919	Y(2),G	Boat Ramp	State ($17,700.00) $ 1,000.00	0	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements Since 1950		Maintenance & Program Cost-Federal Funding 1974-1977
								County Funds	Federal Funds	
Myrtle Grove Jaycee Park (Formerly Meadowbrook Park #1)	2.0	0	0	P	Platted 1955	L,M(2),N	Merry Swing Climb	0	0	0
Old Carver Elementary School (Operated by Dept. of Human Resources)	3.00	0			Owned by School Board "Community School" 1976	L,M,N,O,P(4),I	merry Swing Climb Slide Picnic TBL	$ 1,361.00	$5,667.00	0
Navy Point	60.00	0	0	P	Platted 1945	Z(2)	Boat Ramp	0	0	0
Oak Park	0.6	0	0	P	Platted 1955	M,P(2)	Picnic Swing	By Donation	0	0
Oakcrest Park	1.5	0	0	P	Platted 1954	C,L,M	Swing Slide Climb	Basebl pract $ 590.00	0	0

1 Aero Vista Park:
Between Marine Drive and Milton Road (Warrington)

2 Ashton Brosnaham Recreation Center:
West of Ten Mile Road – West of Chemstrand Road

3 Avondale Park:
East of Muldoon Road, off of Vestavia Lane

4 Baars Field (Gulf Beach Recreation Assoc.):
Near Intersection of State Highway 295 and 292

5 Bayou Marcus Heights:
Between Carroll, King. and Lenora Streets

6 Bluff Springs Public Park:
Block 10 and 37 of Bluff Springs Subdivision

7 Bratt Middle School (Tennis Court only):
Bratt

8 Brent Park (Brent Recreation Assoc.):
Beverly Parkway and Allerton

9 Brentwood Park:
Pensacola Boulevard between Jacquelyn and Virginia

10 Campbell Landing:
Escambia River at Highway 4

11 Cantonment/Ensley Jaycee Park:
Santa Maria Plaza, Center of Cantonment

12 Carver Park:
Cantonment, at intersection of Washington Street and Webb Street

13 Century Elementary School (Tennis court only):
Century

14 Century Wayside Park:
Highway 29 at Century

15 Charbar Lake Park:
(Owned by City) corner of Charbar Drive and Broyhill

16 Chimes Way:
Two blocks South of Beverly Parkway between Chimes and Concordia

17 Civitan Park (Warrington Civitan Club):
Sunset and Second Street

18 Corry Park 2:
North of Barrancas on Druid Drive and Corry Place

19 Corry Park 1:
North of Barrancas Avenue between Park Drive and Manchester Street

20 Don Sutton Recreation Park (Molino Recreation Assoc.):
Molino, West of Highway 29 at intersection of Highway S-97 on Sunshine Hill Road

21 Dorie Miller Park:
North of Leonard Street on East and West of Miller Street

22 Elmer Grimsley Park (Warrington Elementary School):
Navy Boulevard

23 Englewood Park:
South of Leonard, west of "H" Street

24 Escambia Park:
East end of Beggs Lane

25 Fairfield Park:
East of 50th Street on Tulip Drive

26 Forest Park:
South of Clairmont Drive

27 Forte Estates:
West of 77th Avenue, South of Barrington Court

28 Galvez Landing (Gulf Beach Heights):
Between Cruzat and Galvez on Intercoastal Waterway

29 Harvesters Homes Park:
East of Lakeview Avenue at Forrest Street

30 Heritage Park:
Highway 297, South of Kingsfield Road

31 Lake Stone:
One mile west of Highway 29 on Highway 4, Century

32 Lakewood Park:
North of Lakewood Road at intersection of Mandalay

33 Laurel Park:
North of Avery Street, between Orleans and Archer Avenue

34 Lincon Park:
In Lincoln Subdivision on Fiesta Drive

35 Magnolia Park (Ensley Lions Club):
Between Detroit and Montgomery at Alabama Avenue

36 Mayfair Park: 2
In South Madison Drive

37 Mayfair Park: 1
Corner of Massachusetts Avenue and Fenned

38 Meadowbrook Park 2:
East of Teldor Drive between Colby avenue and Benton Road

39 Minnehaha Park and Community Playground:
Between Talladega and Sioux Trail

40 Molino Town Park:
East of Molino on Escambia River

41 Murr Heights:
North and South of Elm Street, West of Warrington Road

42 Myrtle Grove Jaycee Park:
South of Lillian Highway in Myrtle Grove on Adkinson Drive

43 North Mulnorth:
North of Galvez at intersection of Wentworth

44 Old Carver Elementary School:
(Owned by School Board) Century

45 Navy Point:
Next to water, North and South of Senset Drive

46 Oak Park:
North of Hickory East of Spruce Street

47 Oakcrest Park:
North of Fairfield Drive between Opal Avenue and Topaz Avenue

48 Oakfield Acres 2:
(Owned by City) Intersection of Royal Land and White Oak Drive

49 Oakfield Acres 1:
(Owned by City) Intersection of Royal Land and White Oak Drive

50 Osceola Lodge Reservation and Community Playground:
Corner of Cherokee Trail and West Ccmmanche Trail

51 Parish Heights:
Between Sandra Drive and Benton Drive

52 Perdido Gardens:
North of Bay Court at intersection of Perdido Court

53 Perdido Manor:
West of Bay Avenue, South of Live Oak intersection

54 Raymond Riddle Park (West Pensacola Dixie Youth Assoc.):
Between "T" and "W" Streets at Blount Street

55 Regency Park:
End of Squire Road, South of Olive Road

56 River Gardens Park:
Intersection of Sugarberry Road and Crabapple Lane

57 Shady Terrace:
East of Pompano Drive, North of Olive Road

58 Twelve Oaks:
South of Wilkers Drive, Next to L & N Railroad

59 Waters Beach:
Between Second and Third Streets

60 Wentworth Park:
Corner of Scott and Wentworth (next to Catholic High School)

61 Wildewood:
West of Bristol Avenue, North of Medford

PLAINTIFF EXHIBIT #73

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

78-3507

HENRY T. McMILLAN, et al., Plaintiffs, vs. ESCAMBIA COUNTY, FLORIDA, et al., Defendants.	CIVIL ACTION No. 77-0432
ELMER JENKINS, et al., Plaintiffs, vs. CITY OF PENSACOLA, FLORIDA, et al., Defendants.	CIVIL ACTION NO. 77-0433

NOTICE OF FILING

NOTICE IS HEREBY GIVEN of the filing with the Clerk of the Court a verbatim transcript of statements made by and to Defendant Board of County Commissioners and their Attorney during a public hearing held August 31, 1977 regarding the proposed Escambia County Charter. Although it is not clear that these particular conversations were covered by the Order of this Court, dated

August 4, 1977 requiring the parties herein to comply with proposed Local Rule 17, in an abundance of caution, the verbatim transcript of public hearing as set forth in Exhibit A hereof, is filed in accordance with such Order.

/s/ Richard I. Lott
Attorney for Defendant Escambia County
28 West Government Street
Pensacola, Florida

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to J. U. Blacksher, Esquire and Larry T. T. Menefee, Esquire of Crawford, Blacksher, Figures & Brown, 1407 Davis Avenue, Mobile, Alabama 36603, Louis F. Ray, Jr., Sixth Floor, Seville Tower, 226 South Palafox Street, Pensacola, Florida 32501, and Don J. Caton, Esquire, City Hall, 330 South Jefferson Street, Pensacola, Florida 32501, by U.S. Mail this 18th day of October, 1977.

/s/ Richard I. Lott

VERBATIM TRANSCRIPT FROM PUBLIC HEARING OF THE BOARD OF COUNTY COMMISSIONERS HELD AUGUST 31, 1977, HEALTH DEPARTMENT AUDITORIUM REGARDING THE PROPOSED CHARTER FOR ESCAMBIA COUNTY GOVERNMENT

Mr. E. J. Crosswright, P.O. Box 2365, Pensacola, Florida
Mr. Kelson, I'm E. J. Crosswright, and I live east of 12th Avenue. Unfortunately, I do not know who my County Commissioner is, but...

Commissioner Jack Kenney
Right here.

Mr. Crosswright
Thank you. The very first part where it says five members elected county wide. County wide automatically kills it for me because eventually I plan on running maybe for one of your jobs. As long as it is county wide, I can never beat Jack Kenney out. So, of it is at all possible for this to be changed, then I can get in my particular precinct... incidentally, I am precinct committman. I am going to work for it or against it, and I am going to work hard for it or against it. All other parts of this seem to be in keeping with something I can go along with. Thank you.

Chairman Kelson
Thank you, sir. Mr. Lott, would you like to explain how we arrived at this county wide vote? Explain why we chose to go county wide. Would you (Commissioner Deese) like to do that?

Commissioner Charles Deese
This was decided by the Board of Commissioners that it would be a county wide vote rather than an individual running in a district only. My personal reason for voting for this would be that I think I should represent all the people of the county and I think all the people of the county should be able to vote for me or against me. I will be having a part deciding where all the people's money shall be spent and so I think all people of the county should vote on all of the county Commissioners. That's the reason. The situation where the Commissioner has to live in the district is as it has always been.

Mr. Crosswright
Could I speak to that?

Chairman Kelson
Yes sir.

Mr. Crosswright
This is quite true that all the people that are elected should represent all the people; however, it is very difficult for you or anyone else to know the county, to know other than your particular district. This is why I didn't know that Kenney was a member of my particular district. This is why I do not know who my City Councilman is. What I'm saying simply is this – As long as you have it like this, you are not going to have people concerned with their particular government. You need to know people first hand. You need to be able to come into our district, your district. For instance, Jack Kenney can get elected if nobody in his district decides to vote for him, and this is wrong. No person in Jack Keeney's district could vote for him and he could be elected. You are_____. On the other hand, if you were elected and selected by members of your district, you would have to come to your district to get elected. You would be more concerned with your district. I think it is very unfair. It is something that no one can show me that I should not know who my respective representative is. As I said, I had to go to City Hall meetings to find out Mr. North... Mr. Northrup, I still don't know the name. I saw him on the stage, but other than that I have never met him, and I am precinct committeeman in my district. Jack has never come and asked me, "Look here, let's get together and get these 600 people." He doesn't need those 600 people in precinct 50. He can get elected otherwise, and I think this is wrong.

Commissioner Kenney
I think you have a very valid point, and I am not really very strong on county wide thing myself. I don't really feel it is that important. I feel like to a degree, it is kind of a hang over from the old Road Board that this Commission used to be where the Commissioner's only job was to take

care of paving roads in a certain district and that was all he had to worry about. We have progressed quite a ways since then, where we deal with municipal problems a great deal more since 2/3's of our population lives outside the city limits and still wants municipal services. That's one side of it. The question I would like to ask you and it would have a direct bearing – this is not – by the way, nobody has explained that tonight – this is not the final document that is going to be placed before the voters. We are coming here tonight to get ideas from the public to incorporate into the final document which will be presented in November and I would be glad to hear more from you in a personal way on what you think might be the reaction regarding additional candidates, a lot of people to choose from, and all political philosophies, liberal and conservative, and all races. I would like very much if you wouldn't mind contacting me after Labor Day – I am going to be out the first part of next week – and let's you and I sit down and talk about it because.... I went along with this thing and my mind could be changed for very good reasons and I would like to talk to you more about it. Would you answer this question for me now? Do you think more people from District 4, more qualified people from my district, would be interested in local government; more interested than they are now, if we were elected on a district by district basis?

Mr. Crosswright
Sir, I will assure you that they will be because I will see to it that they will.

Commissioner Kenney
Thank you very much for your thoughts.

Chairman Kelson
Mr. Lott, I think you should explain how we operate

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements since 1950		Maintenance & Program Cost-Federal Funding 1974-1977
								County Funds	Federal Funds	
Oakfield Acres #1	2.0	0	0	P	Leased from City ($1.00 per year) 1976	C	Basebl	By Donation	0	0
Oakfield Acres #2	0.8	0	0	P	Leased from City ($1.00 per Year)		Slide	0	0	0
Osceola Lodge Reservation and Community Playground	3.0		0	P	Platted 1926	0		0	0	0
Parish Heights	1.4		0	P	Platted 1953	0		0	0	0
Perdido Gardens	1.4	0	0	P	Platted 1925	0		0	0	0
Phietwater Beach	4.5	0	0	P		Z(4)		0	0	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.		Maintenance Cost 1974-1977 ***	Capital Improvements Since 1950		Maintenance & Program Cost Federal Funding 1974-1977
								County Funds	Federal Funds	
Raymond Riddle Park (Operated by West Pensacola Dixie Youth Association)	11.44	0	0		$150,00 1975	Basebl Softbl A(2),D,G,CS,RR Footbl Baskt Concession Stnd	Restr	$700.00	0	0
Regency Park	20.00		0	P	1971	0		0	0	0
River Gardens Park	5.00	0	0	P	Platted 1964	0		0	0	0
Shady Terrace	2.00	0	0	P	Platted 1962	Basebl C		By Donation	0	0
Sherwood Park	01.00	0	0	P	Platted 1957	Basketbl Merry I,M,C	Rest	By Donation	0	0
Wedgewood School	02.00	0	0	P	Community School 1976	L,M(2),N Merry Go Rn Swing Climber		By Donation	0	0

PARKS	Total Acreage	County Employees Permanent	County Employees Part-Time	Type of Program Offered *	Initial Cost and Date of Construct.	Type of Facilities **	Maintenance Cost 1974-1977 ***	Capital Improvements Since 1950		Maintenance & Program Cost-Federal Funding 1974-1977
								County Funds	Federal Funds	
Wentworth Park	07.00	0	0	P	Leased from Catholic High ($1.00 per Year) 1973	Baseball Adult Swing B.M		$488.00	$11,736.00	0

under the present system and why we are county wide, if you don't mind.

County Attorney Lott
Under the present Constitution, which was amended in 1969, a charter can't change the manner of electing county commissioners. The previous Constitution provided that commissioners be elected by electors of the County. Up until 1954, the practice was for commissioners to be elected by district. In 1954, the Supreme Court of Florida held that election by district violated the right to vote of people who were in effect ruled by commissioners, but didn't get to vote on all of them. For that reason, every since 1954 and pursuant to that Court Order, commissioners have been elected county wide.

Mrs. Ruby Gainer, Ph.D., 1516 W. Gadsden Street, Pensacola, Florida
Who is my County Commissioner?

Chairman Kelson
That would be me.

Dr. Gainer
Well, I have the same complaint also, but I would like to know if there are any safeguards in here whereas a minority may have a chance to be elected, and may have an opportunity to represent all the people the same as others. As I look on the platform tonight, I know I'd certainly feel better if I would at least see one image of someone – I see someone running around – you know, just running around seeing about the mikes or something, but really in the political government, in the set up, what safeguard could you give to minorities that they too would have active participation in this type government? And the second question, while I'm here I will just ask the other one – in

what relationship would the City Council have? Would it be completely eliminated? Would it be in a cooperative measure, or how would it fit in with this type charter?

County Attorney Lott
On your question about the City Council, the Charter only applies to the County form of government. Section 105 of the Charter expressly provides that there can be no consolidation of government with the City unless it is expressly approved by a vote of the people both within the City and outside the City. There is also a provision in the Charter concerning the fact that an ordinance, which is in conflict with any ordinance the City Council adopts, will not prevail in the City to the extent of such conflict. So if the City passed an ordinance saying one thing, and the County passed an ordinance saying something else, within the City limits, the City ordinance would be the law.

Dr. Gainer
You didn't answer my first question.

Chairman Kelson
Let me try to answer Mrs. Gainer. Mrs. Gainer is talking about different people being elected. I gave up a seat on the City Council in 1970. Mr. Hollis Williams, the present City Councilman, was appointed to this job, and I don't believe Mr. Williams has had any trouble at all holding the job of City Councilman. In fact, if my memory serves me right, his first election – I think he beat three white people. It wasn't his own race, but white people. He beat them in the first primary very outstanding because he proved that he did a good job. The second time he run, I don't remember if he was unopposed. I know this last time he was unopposed. So, I think we need to get away from that really if this country is ever to become the greatest thing in the world.

Dr. Gainer
May I speak to your last point? This country can never get away from it as long as identification of the two groups, and some safeguards or measures must be made as long as we have the type of identities that we have. As much as I, too, would like to see us get away from it, but there is no need of us saying that we can get away from reality; that we can get away from the actual facts. Whereas you want to ignore it on one hand, you are not willing to ignore it on other hand. There are some positions in which blacks have never had an opportunity from Mayor on. I feel that not only a black could be a mayor in this piace. the same as a woman or man could be. So as long as it suits to your advantage, and you have the advantage at this time because you have a majority, and it's very difficult when you have a minority, and until you bring up the level of all the people and their type of theories that you propose — every person in Escambia County be as liberal as you are and probably as intelligent as you may be. But when we continue to live in the climate with the type of image that we have, we have to consider the truth of the matter.

Commissioner Deese
Mrs. Gainer, let met respond to some of the remarks that you made, please.

Dr. Gainer
Yes

Commissioner Deese
In the Democrat society, the majority rules. Those who vote cast the vote for or against. The person who wins the most votes in the winner. The person who loses is the one who gets the lesser number of votes. We can't dictate that each person who goes to the polls must vote for any certain person. This would be undemocratic. So therefore, I

think it should be known in a democratic society that everyone has a chance according to the way be brings it across to the people. If he wins the people's interest, then they will, of course, vote for him. I think everyone has a chance at the polls. There are no restrictions at the polls because of race, creed, color, or anything. There are no restrictions there.

Executive Director Joe Mooney
Mr. Chairman, Mrs. Gainer, uh. I think the point you made... that it is real important in terms of identification for people, particularly for younger people, that they have their own idols to look up to and people that are leaders, that are identified as such. I think it would be unfortunate... I didn't want you to go away with the understanding that one of the county's four department heads, Mr. Wilson, the black gentleman you saw fixing the mikes and who is in charge of personnel, administration, planning, community development, is somebody that has no influence in the system or has a job of a menial nature. He is one of the four department heads and I just wanted to clear that up, both for your benefit, and I think in all fairness to Mr. Wilson. He is a major department head, and one of four in the county. He has a substantial budget and has substantial areas. He is the Chief of Administration for this County, and I just wanted to bring that out – not to debate your other point, because I do think it is quite important.

Dr. Gainer
Why don't you bring him up on the stage sometime?

Mr. Mooney
He was on the stage until today, and it was his choice not to be here. But not to debate that point. But there are four department heads and Mr. Wilson is one of those four

department heads and currently 3 people serve in positions as department heads, and Mr. Wilson is one of 3. I think that that image is quite important and I think that people should be recognized for the position that they serve in.

Mr. Crosswright
Mr. Chairman, I would like to speak to what you said concerning Mr. Hollis Williams. He is a very dear friend of mine and has been for the past 20 years. He is a very fine man. I understand this, but what we are talking about here in this election of one man-one vote situation is not the democrat situation as you speak of here because we as black people did not choose Mr. Hollis Williams. This was the choice of your people. We want a situation where we can choose a black person, and this hasn't been done in this county... Mr. Hollis is fine. We are glad to have him. We would like to choose one – We are glad you made a choice of him, but let us choose one too. This is what we want. This is the democratic way.

Chairman Kelson
I didn't choose him myself you know. I wasn't there.

Mr. Crosswright
Well, the white people made the choice. We didn't... the blacks didn't.

Chairman Kelson
Well, he's been elected three times in a row, so somebody elected him.

Mr. Crosswright
When it's county wide, you can elect anyone who wish.

Chairman Kelson
He doesn't run in the county. He was elected in the city.

Mr. Crosswright
Well, City wide. What's the difference?

Chairman Kelson
Well, I could debate a lot of that, but I won't get into it.

- - - - -

Mr. George Price, 1828 North "B" Street, Pensacola, Florida (Mr. Price arrived later in the meeting)

Has anyone spoken in opposition to elections being held county wide?

Chairman Kelson
Yes, sir.

Mr. Price
Good

STATE OF FLORIDA,

COUNTY OF ESCAMBIA.

I, JOE A. FLOWERS, COMPTROLLER, and ex-officio Clerk to the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the above and foregoing is a verbatim excerpt from the Public Hearing of the Board of County Commissioners on the 31st day of August, 1977.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 9th day of September, 1977.

JOE A. FLOWERS, COMPTROLLER
AND EX-OFFICIO CLERK TO THE
BOARD OF COUNTY
COMMISSIONERS
OF ESCAMBIA COUNTY, FLORIDA

BY /s/ Jean Murrer
Deputy Clerk

EXHIBIT 80

1973-77 Escambia County, City of Pensacola EEO-4 Summary Job Classification and Salary Analyses

1977 Escambia County, City of Pensacola EEO-4 Summary Job Classification Analysis

	Financial Administration		Streets & Highways		Police Protection		Park & Recreation		Hospitals & Sanatoriums		Housing		Community Development		Corrections		Utilities & Transportation		Sanitation & Sewage		Other		Total		% Black
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	
Service Mainten.	22	4	36*	14	5	9	6	4	1	27	–	–	–	–	2	–	–	–	8*	3	4	16	54	77	47
Skilled Craft	9	–	59	3	2	–	2	–	–	–	–	–	–	–	–	–	–	–	10	3	–	–	82	6	7
Clerical	201*	7	6	–	55*	–	2	–	2	–	3	–	2	–	–	–	1	–	3	–	1	–	276	7	2
Para-Profession	1	1	–	–	–	–	–	–	13*	35	–	–	–	–	–	1	–	–	–	–	26	·	40	37	48
Protective Service	2	–	–	–	119	8	–	–	–	–	–	–	–	–	24	–	–	–	–	–	–	–	145	8	5
Technician	43	2	20*	–	40	1	1	–	12	8	–	–	4	–	–	–	–	–	8	–	10	–	138	11	7
Profesional	43*	10	–	–	7	–	–	–	7	–	3	–	–	–	2	–	–	–	1	–	–	–	63	10	14
Officials Admin.	8*	1	2	–	–	–	2	–	1	–	–	–	1	–	–	–	1	–	–	–	–	–	15	1	6
Total	329	25	123	17	228	16	13	4	36	70	6	·	7	·	28	1	2	·	30	6	41	16	843	157	15.7%

*Includes other races

1977 Escambia County City of Pensacola EEO-4 Summary Salary Analysis

	Financial Administration		Streets & Highways		Police Protection		Hospital & Sanatoriums		Housing		Community Development		Corrections		Utilities & Transportation		Sanitation & Sewage		Park & Recreation		Other (Custodial Ser. Emergency Ser. CEPA)		Total		% Black
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	
0.1 – 3.9	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
4.0 – 3.9	33	3	5	1	9	1	16*	18	1	–	–	–	–	–	–	–	4*	1	1	2	–	–	60	26	27
6.0 – 7.9	120*	6	45*	15	23*	9	9	46	1	–	1	–	–	–	–	–	7	3	3	13	6	4	215	96	31
8.0 – 9.9	70*	7	50*	1	32	1	3	6	1	–	1	–	1	–	1	–	15	2	31	–	3	–	208	18	8
10.0 – 12.9	66*	5	16	–	79	6	7	–	3	–	2	–	25	–	–	–	3	–	6	1	2	–	209	12	5
13.0 – 15.9	21	1	4	–	78	1	–	–	–	–	2	–	2	–	–	–	–	–	–	–	–	–	107	2	2
16.0 – 24.9	19	3	2	–	7	–	1	–	–	–	1	–	–	–	–	–	1	–	–	–	2	–	33	3	8
25.0 – Plus	–	–	1	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	2	–	–
Total	329	25	123	17	228	18	36	70	6	–	7	–	28	1	2	–	30	6	41	16	13	4	843	157	15.7%

*Includes other races

1975 Escambia County EEO-4 Summary Job Classification Analysis

	Financial Administration		Streets & Highways		Police Protection		Natural Resources		Hospitals & Sanitoriums		Health		Housing		Community Development		Corrections		Utilities & Transportation		Sanitation & Sewage		Emergency Services		Total		% Black
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	
Officials Admin.	12	8	2	0	1	0	1	0	–	–	1	0	–	–	1	0	2	0	–	–	1	0	–	–	21	8	
Professionals	2	0	1	0	25	0	–	–	–	–	1	0	–	–	4	1	0	1	–	–	–	–	–	–	33	2	
Technicians	29	1	46	10	29	0	1	0	7	8	2	0	4	0	1	0	–	–	–	–	3	0	–	–	122	19	
Protective Service	8	0	–	–	139	12	–	–	–	–	–	–	–	–	–	–	34	0	–	–	–	–	–	–	181	12	
Para-Profesional	–	–	–	–	–	–	1	0	12	36	–	–	–	–	0	1	2	0	–	–	–	–	36	0	51	37	
Office Clerical	81	0	5	0	34	1	2	0	2	0	–	–	3	4	2	0	3	0	2	0	1	0	1	0	136	5	
Skilled Craft	–	–	–	–	3	0	–	–	–	–	1	0	9	3	–	–	1	0	–	–	11	1	–	–	25	4	
Service Maintenance	4	15	–	–	8	26	1	2	4	20	3	0	8	4	–	–	35	2	8	0	1	2	–	–	72	71	
	136	24	54	10	239	39	6	2	25	64	8	0	24	11	8	2	77	3	10	0	17	3	37	0	641	158	

1975 Escambia County EEO-4 Summary Salary Analysis

	Financial Administration		Streets & Highways		Police Protection		Natural Resources		Hospital & Sanitoriums		Health		Housing		Community Development		Corrections		Utilities & Transportation		Sanitation & Sewage		Emergency Services		Total		% Black
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	
0 – 5.9	0	6			12	14			6	13			2	0			3	1			1	2			24	36	
6.0 – 7.9	5	10			24	13	2	0	17	44	3	0	4	7	1	0	28	1	3	0			18	0	105	75	
8.0 – 9.9	60	5			32	0	2	2	2	7	3	0	8	4	2	1	18	1	7	0	12	1	18	0	164	21	
10.0 – 24.9	71	3			171	12	2	0			2	0	10	0	5	1	28	0			4	0	1	0	294	16	
Total	136	24			239	39	6	2	25	64	8	0	24	11	7	2	77	3	10	0	17	3	37	0	587	148	

1974 Escambia County City EEO-4 Summary Job Classification Analysis

	Financial Administration		Streets & Highways		Public Welfare		Hospital Sanitorium		Hospital Sanitorium		Health		Housing		Community Development		Corrections		Utilities & Transportation		Sanitation & Sewage		Total		% Black
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	
Officials Administrative	20	0	5	0	1	0	1	0	1	0	0	0	0	0	1	0	0	0	1	0	0	0	30	0	
Professionals	8	0	1	0	0	0	0	0	8	0	0	0	0	0	0	0	0	0	2	0	0	0	19	0	
Technicians	9	1	3	0	0	0	13	22	5	11	0	0	0	0	0	0	0	0	2	0	0	0	32	34	0
Protective Service	1	0	26	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5	1	32	1	
Para-Professionals	17	0	1	0	2	1	10	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	31	1	
Office Clerical	88	2	4	0	3	0	3	0	3	0	1	0	0	0	0	0	0	0	3	0	1	0	106	2	
Skilled Craft	0	0	32	0	0	0	0	1	0	1	2	0	0	0	0	0	0	0	6	0	7	2	47	4	
Service Maintenance	0	0	27	1	0	0	50	20	13	62	4	1	0	0	0	0	1	0	9	3	5	0	109	87	
Total	143	3	99	1	6	1	77	43	30	74	7	1	0	0	1	0	1	0	24	3	108	3	466	129	

1974 Escambia County EEO-4 Summary Salary Analysis

	Financial Administration		Streets & Highways		Public Welfare		Hospital Sanitorium		Hospital Sanitorium		Health		Housing		Community Development		Corrections		Utilities & Transportation		Sanitation & Sewage		Total		% Black
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	
0 – 5.9	36	1	24	1	2	0	49	21	16	63							1	0					128	86	
6.0 – 7.9	54	1	29	0	2	0	23	22	9	11	3	1							10	3	95	0	225	38	
8.0 – 9.9	29	1	39	0	1	0	3	0	2	0	2	0							4	0	11	2	92	3	
10.0 – 24.9	24	0	7	0	1	1	2	0	2	0	2	0							10	0	2	1	50	2	
Total	143	3	99	1	6	1	77	43	30	74	7	1					1	0	24	3	108	3	495	129	

1973
Escambia County
EEO-4 Summary
JOB CLASSIFICATION ANALYSIS

	FINANCIAL ADMINISTRATION		STREETS & HIGHWAYS		POLICE PROTECTION		NATURAL RESOURCES		HEALTH		COMMUNITY DEVELOPMENT		CORRECTIONS		SANITATION & SEWAGE		UNCLASSIFIED NOT UNDER CIVIL SERVICE				TOTAL		% BLACK
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B			W	B	
Officials Administration	2	0	1	0	23	0	1	0	5	3	1	0	0	0	1	0	13	0			47	3	
Professionals	8	0	0	0	0	0	0	0	96	1	0	0	0	0	2	0	11	0			117	1	
Technicians	21	1	12	0	0	0	0	0	83	45	1	0	0	0	4	0	0	0			121	46	
Protective Service	9	1	31	0	70	1	0	0	26	53	0	0	0	0	6	0	0	0			142	55	
Para-Professionals	17	0	2	0	0	0	1	0	20	50	0	0	1	2	1	0	5	0			47	52	
Office Clerical	133	5	4	1	30	4	1	0	61	2	1	0	1	0	6	0	15	0			252	12	
Skilled Craft	11	0	47	0	0	0	0	0	0	0	0	0	0	0	10	2	0	0			68	2	
Service Maintenance	7	21	33	1	0	0	1	1	32	79	0	0	0	1	17	6	0	0			90	103	
TOTAL	208	28	130	2	123	5	4	1	323	233	3	0	2	3	47	8	44	0			884	274	

1973
Escambia County
EEO-4 Summary
SALARY ANALYSIS

	FINANCIAL ADMINISTRATION		STREETS & HIGHWAYS		POLICE PROTECTION		NATURAL RESOURCES		HEALTH		COMMUNITY DEVELOPMENT		CORRECTIONS		SANITATION & SEWAGE		UNCLASSIFIED NOT UNDER CIVIL SERVICE				TOTAL		% BLACK
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B			W	B	
0 - 5.9	77	26	38	2	29	4	2	1	148	167	1	0	0	1	21	6	11	0			327	207	
6.9 - 7.9	84	2	79	0	32	0	1	0	68	27	1	0	1	3	19	2	7	0			292	34	
8.0 - 9.9	39	0	9	0	87	3	-	-	68	2			1	1	3	0	8	0			215	6	
10.0 - 24.9	8	0	4	0	24	0	1	0	37	0	1	0			3	0	18	0			96	0	
TOTAL	208	28	130	2	172	7	4	1	321	196	3	0	2	5	46	8	44	0			930	247	

1976 Escambia County EEO-4 Summary Job Classification Analysis

	Financial Administration		Streets & Highways		Police Protection		Natural Resources		Housing		Community Development		Corrections		Utilities & Transportation		Sanitation & Sewage		Nursing Home		Emergency Services		Total		% Black
W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	
0 – 5.9	36	13	16	7	11	2	0	0	0	0	–	–	1	1	–	–	0	1	5	21	–	–	69	45	
6.0 –	126	21	38	3	17	4	2	2	1	0	1	0	–	–	1	0	3	2	17	54	6	0	212	86	
8.0 – 9.9	79	10	24	0	37	1	1	0	–	–	2	1	2	0	1	0	14	5	2	7	27	0	189	24	
10.0 – 24.9	94	8	13	0	153	4	1	0	2	0	5	0	28	1	1	0	3	0	1	0	3	0	304	13	
Total	335	52	91	10	218	11	4	2	3	0	8	1	31	2	3	0	20	8	25	82	36	0	774	168	

PLAINTIFF EXHIBIT No. 92
(PENSACOLA NEWS JOURNAL, AUGUST 23, 1959)

INTEGRATION IS FORCED ON MAJORITY

With the beginning of another school year and the renewed battle of segregation vs. non-segregation I wish to express my opinion. I defy anyone that says integration is the wish of the majority of the people There is a name for a few who try to force their wishes on the majority no matter what their reasons are. I and any sensible person know that for whatever reason they might have. It isn't for the good of humanity or any one color or race of people. It is for money or power politically or otherwise.

I know that if they were thinking of humanity they would realize that God made us all whether we are black, white, red or yellow. If he had wanted only one he could have had that. He made one of every living creature and gave each a nature of his own. Each one of us should do in a way to be proud of who we are regardless of our color.

The law might force people together, but no one can change the fact that it was force not acceptance. Can a government look out for a country as a whole if its National Guards and troops have to stand by to force the people to stay at peace with one another. The saying goes a divided ration can't stand and this is such. People always have and always will resent being forced to do something against their will.

If true integration ever comes it will be from the heart not by force.

MRS. EVA DIAMOND
1794 North Kirk St.

PLAINTIFF EXHIBIT No. 95
(THE PENSACOLA JOURNAL, AUGUST 13, 1959)

FAIR USE ONLY VALIDATES PUPIL PLACEMENT STATUTE

Ruling of a federal judge in Tampa that Negro pupils must make application to Tampa schools under the pupil placement law procedure instead of first taking their cases to court was another indication of the inherent validity of the Florida statute, which was strengthened at the last session of the Legislature.

However, J. Lewis Hall, Tallahassee, former member of the Fabisinski Committee on racial relations and president of the Florida Bar, has warned that the law must be used fairly and justly and not as a subterfuge if it is to remain valid.

In other words, as Hall said soon after the law was enacted, it is not an absolute bar to all integration. If it is used as such, it can be held invalid by the U.S. Supreme Court. If it permits some integration, while barring others upon substantial grounds as set forth in the law, then it most likely will be held constitutional.

This is where the split comes between extremist segregationists who do not want even token mixing in schools and so-called moderates who think a little mixing is better than "massive resistance" followed by "mass integration" on Court order.

Regardless of opinion on desegregation, many have come to realize that it cannot be prevented if the public school system is to be maintained: and sentiment in the last Legislature showed that those in control preferred preservation of public schools with token compliance under the Pupil Placement Act to futile attempts to prevent any

desegregation with the consequent wrecking of public schools as followed in Virginia and Arkansas.

Both states since have reopened schools to Negro pupils, though one Virginia County has preferred to close its public schools.

As the new school term nears, decisions will have to be made in several counties, including Escambia, as to whether the pupil placement law is to be used carefully and legally, or as a ban against any desegregation. Upon those decisions probably will rest the validity of the law in practice, for up to now it has only been held valid on its face.

That is why Governor Collins said recently he expected some integration in Florida in the next school year.

FILED
AUG 8 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1295

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX
VOL. V – Pages 1155-1304

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Appeal Docketed February 2, 1983
Probable Jurisdiction Noted April 18, 1983

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Memorandum Decision and Judgment of the United States District Court of the Northern District of Florida in *McMillan* v. *Escambia County, Florida,* PCA No. 77-0432 (N.D. Fla. July 10, 1978) B-71a

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Proposal of Charter Commission Appointed in 1975

CHARTER GOVERNMENT STUDY COMMITTEE REPORT

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

ESCAMBIA COUNTY, FLORIDA

1975-1976

1156

ESCAMBIA COUNTY

PROPOSED CHARTER

BY

CHARTER GOVERNMENT STUDY COMMITTEE

FOR

BOARD OF COUNTY COMMISSIONERS

MEMBERS

B. G. Tennant, Chairman

Adrian Blanton
Ashton Brosnaham, Jr.
Ms. Jacquelyne Simmons
Frank Westmark

MAJORITY REPORT BY:

B. G. Tennant, Chairman
Frank Westmark
Ms. Jacquelynne Simmons

Escambia County, Florida

1975-76

1976 Escambia County EEO-4 Summary Salary Analysis

	Financial Administration		Streets & Highways		Police Protection		Natural Resources		Housing		Community Development		Corrections		Utilities & Transportation		Sanitation & Sewage		Nursing Home		Emergency Services		Total		% Black
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	
Officials Admin.	5	2	–	–	–	–	1	0	–	–	1	0	1	0	–	–	1	0	–	–	1	0	10	2	
Professional	37	10	1	0	2	0	–	–	2	0	3	0	3	0	–	–	0	1	1	0	–	–	49	11	
Technicians	62	3	8	0	41	0	–	–	–	–	2	0	1	1	2	0	6	0	9	9	10	0	141	13	
Protective Service	2	0	1	0	139	6	–	–	–	–	–	–	25	0	–	–	–	–	–	–	–	–	167	6	
Para-Profesionals	–	–	–	–	1	0	–	–	–	–	–	1	–	–	–	–	–	–	11	39	24	0	36	40	
Office Clerical	189	5	2	0	32	1	1	0	1	0	2	0	1	0	1	0	–	–	3	0	1	0	233	6	
Skilled Craft	26	3	36	0	2	0	–	–	–	–	–	–	–	–	–	–	10	5	–	–	–	–	74	8	
Service Maintenance	14	29	43	10	1	4	2	2	–	–	–	–	0	1	–	–	3	2	1	34	–	–	64	82	
Total	335	52	91	10	218	11	4	2	3	0	8	1	31	2	3	0	20	8	25	82	36	0	774	168	

FOREWORD

Anyone who has tried to sell a complex product such as governmental structure knows the difficulties involved in getting the message to the people. Without knowledge, the public is apt to accept only what they know – "status quo." As our changing society requires counties to provide new and improved services and perform new functions, they must have more flexibility of operation and financing.

It is a fundamental principle that home rule, or the right of local self-determination is a corner stone of our American democracy. Counties must have the freedom to act, to participate, and to be responsible in matters of purely local interest.

Reorganization of County government should not be undertaken lightly, but with full recognition of the need for change. To the people heavily involved in government, the need is so obvious that they never establish a case for change. The average citizen feels no impelling need, no urgency for any major restructure of the governmental pattern. Perhaps the most basic reason is the lack of awareness of the need for change and the lack of knowledge of the present structure.

Few citizens are aware of the County's ties to state and federal government and the limitations of County powers. These ties have a direct relationship to the cost of local government and the inability of County government to respond to local problems. Restrictions on County government have accumulated to the point of stifling local initiative in the very areas most susceptible to local interest and control, and priorities are often neglected because federal programs overshadow locally defined needs. Dur-

ing the past ten years. expectations of citizens have been raised that every economic and social problem would be solved with funds provided by some new federal program, and federal programs continue to fund private agencies within the County. This does not mean, however, that the County should not obtain the maximum federal funds available in providing necessary or desirable needs and objectives of the County.

We must find some way to revitalize local government and roll back increasing concentration of power of the state and federal governments. We must also find some method to allow County government more flexibility of form, function, and finance; therefore, modernizing County government is perhaps the most pressing need for action. County governmental machinery of the Twenties and Thirties is simply not capable of meeting the demands of the Seventies and Eighties.

B. G. Tennant, R.S., Chairman
Charter Government Study Committee

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*****

PROPOSED

ESCAMBIA COUNTY CHARTER

PREAMBLE

We, the people of Escambia County, Florida, join together, under God, in the belief that County government shall be responsive to the people of the County and shall serve the people in a manner of efficiency and accountability, with equal benefits for all citizens; do in accordance with the Constitution and Laws of the State of Florida, ordain and establish as our Charter and form of government this Charter of Escambia County, Florida.

ARTICLE I

POWERS OF GOVERNMENT

SECTION 101. BODY CORPORATE AND POLITIC.

Escambia County shall be a Body Corporate and Politic, and as such shall have all rights and powers of local self-government, which are now, or hereinafter may be, provided by the Constitution and Laws of Florida, and this Charter.

SECTION 102. NAME AND BOUNDARIES.

The Corporate name of this County government shall be "Escambia County," hereinafter referred to as the "County," and shall be so designated in all actions and proceedings touching, its rights, powers, properties, and duties. Its seat shall be within Pensacola, Florida, and boundaries of the County shall be those presently designated by law.

SECTION 103. GENERAL POWERS OF THE COUNTY

The County, under this Charter, shall have all powers and duties described by the Constitution, Laws of Florida, and this Charter, and shall have all powers of local self-government, provided however, the County shall have no power to promulgate, adopt or enforce any rule, regulation, resolution or ordinance or to assume or exercise jurisdiction with respect to any matter or thing with respect to which, the state of federal government or any department, division, commission or authority thereof is or may be authorized or empowered to exercise jurisdiction.

SECTION 104. SPECIAL POWERS.

The County shall have all special powers and duties which are not inconsistent with this Charter, heretofore granted by law to the Board of County Commissioners, except as limited by Section 103. The County shall have the power to provide County or municipal purposes, except as otherwise provided by the Constitution or general law of Florida.

SECTION 105. TRANSFER OF POWERS.

The County shall have the authority to assume and perform all functions and obligations now or hereinafter performed by any municipality, special district or agency whenever such municipality, special district or agency shall request the performance of transfer of the functions to the County.

SECTION 106. DIVISION OF POWERS.

This Charter hereby establishes separation between the legislative, administrative, and judicial functions of this

government; the establishment and adoption of policy shall be the responsibility of the Legislative Branch and the execution of that policy shall be the responsibility of the Administrative Branch.

SECTION 107. EXERCISE OF POWERS.

All powers of the County shall be executed as provided by this Charter or, if the Charter makes no provisions, as provided by ordinance or resolution of the Board of County Commission.

SECTION 108. SECURITY OF THE CITIZENS' RIGHTS.

In order to secure to the citizens of the County protection against abuses and encroachments, the County shall use its powers to prevent by ordinance or by civil or criminal action, whenever appropriate, in securing for all citizens:

A. Just and Equitable Taxation: The County shall prevent the imposition of any tax within the County in excess of the limitation imposed by Article VII, Section 9, of the Florida Constitution, or by the Laws of Florida;

B. Proper Use of Public Property: The County shall prevent the use of public property, taxes, or taxing power for the benefit of private individuals, partnerships, or corporations in violation of the restrictions imposed by Article VII, Section 10, of the Florida Constitution, or by the Laws of Florida;

C. Full Disclosure of Public Records and Proceedings: All meetings and proceedings established by the County shall be open to the public in compliance with the Laws of Florida. All official acts, documents, and financial reports, except those which have been specifically

prepared for use in court proceedings, criminal and law enforcement files, those which would invade a person's right of privacy, shall be open for public inspection, and the agency having custody and control of public records shall, upon request supply certified copies of the records requested for a reasonable fee as established by ordinance;

D. Protection of Human Rights: The County shall establish provisions, pursuant to state and federal law, for protection of citizen human rights from discrimination based upon religion, political affiliation, race, color, age, sex, or national origin by providing and insuring equal rights and opportunities for all citizens of Escambia County.

SECTION 109. ORDINANCE SUPERIORITY.

Where a municipal ordinance conflicts with a County Ordinance, the municipal ordinance shall prevail to the extent of such conflict, otherwise, County ordinance shall be effective countywide including within municipality.

SECTION 110. CONSTRUCTION.

The powers granted by this Charter shall be construed liberally in favor of the County government. The specified powers in this Charter shall not be construed as limiting, in any way, the general or specific power of the County, as stated in this Charter and the Constitution and Laws of the State of Florida.

SECTION 111. SEVERABILITY.

If any article, section, subsection, sentence, clause or provision of this Charter or the application thereof shall be held invalid for any reason, the remainder of the Charter and of any ordinances, regulations or resolutions made thereunder shall remain in full force and effect.

ARTICLE II

LEGISLATIVE BRANCH: COUNTY COMMISSION

SECTION 201. COMPOSITION.

The legislative power of the County shall be vested in the Escambia County Board of County Commission, hereinafter referred to as the "Commission." As of the effective date of this Charter, the Commission shall be composed of seven (7) members. There shall be five (5) Commission districts and one (1) Commission member shall be elected from each district by voters of that district. There shall be two (2) Commission members elected at large by voters of the entire County. The Commission members elected at large shall represent the County at large.

SECTION 202. TERMS OF OFFICE.

All County Commissioners shall be elected on a partisan basis for staggered terms of four (4) years, except as provided for in this section. The Commission members elected from a district shall be elected for a term of four (4) years, and be limited to two (3) consecutive terms as a district Commissioner. Upon adoption of this Charter, the two (2) additional at-large seats created by this Charter shall be filled at the next general election by electing one (1) Commissioner for two (2) years and one (1) Commissioner for four (4) years, and each term shall be four (4) years thereafter. Commission members elected at large shall be limited to two (2) consecutive terms.

SECTION 203. CONTINUANCE OF COMMISSIONERS.

The Commission members in office on the effective date of this Charter shall continue in office until the normal expiration of their term or until the election of their successors.

SECTION 204. APPORTIONMENT.

The Commission shall divide the County into five (5) districts of contiguous territory as nearly equal in population as practicable after each decennial census. If the Commission is unable to complete the reapportionment of the Commission districts within six (6) months after the official publication of the census, the Director of Law, upon authorization of the Commission or upon petition of twenty-five (25) electors of the County, shall petition the Circuit Court having jurisdiction in the County to make such reapportionment.

SECTION 205. COMPENSATION.

Commission members' salaries shall be as established by general law. Commission members shall not be reimbursed for expenses other than those specifically approved by the Commission. Members of the Commission shall receive reimbursement for their actual and necessary expenses incurred in the performance of their official duties as provided by general law.

SECTION 206. QUALIFICATION.

Members of the Commission shall be qualified electors of the County and shall have been a resident of the County for one (1) year immediately preceding the date on which they qualify to run for office. Members elected from districts shall have resided within the district from which they are elected for at least six (6) months prior to the date on which they qualify to run for office. Any Commission member who changes residency from the County, and any Commission member elected by district who changes residency from the district from which the member was elected, shall be deemed to have vacated his office.

If a member ceases to be a qualified elector of the County or is convicted of a crime involving moral turpitude, he shall immediately forfeit his office. The Commission shall be judge of the qualifications of its members, and with that purpose, shall have power to subpoena witnesses, take testimony, and require the production of records. Decisions made by the Commission in the exercise of powers granted by this section shall be subject to review by the courts.

SECTION 207. VACANCIES.

A vacancy in any Commission member's office or other elected County official under this Charter government shall be filled in accordance with the Constitution and Laws of Florida.

SECTION 208. SUSPENSIONS.

Suspensions from office of any elected official shall be for cause and shall be in accordance with the Constitution and Laws of Florida.

SECTION 209. POWERS AND DUTIES OF OF THE COMMISSION.

The Commission shall have all jurisdiction and powers granted to it by the Constitution, Laws of Florida, and this Charter. The Commission, in addition to other powers and duties provided in this Charter, shall have the specific powers and duty to:

(1) Confirm appointment by a majority vote of the full Commission and to remove by a majority vote of the full Commission the Executive Director; department heads of the County; members of appointed County Boards, commissions, and advisory groups, except as otherwise provided for in this Charter.

(2) Elect from among its members a Chairperson and a Chairperson Pro Tem. The Chairperson shall preside at Commission meetings. If at any meeting the Chairperson is not present or is unable to act, the Chairperson Pro Tem shall preside. The Chairperson and the Chairperson Pro Tem shall be elected annually prior to December 1, and shall take office on the first Thursday of January of each year.

(3) Adopt a seal for the County.

(4) Adopt, amend, and repeal ordinances and resolutions

(5) Adopt and amend the Administrative Code.

(6) Provide for an independent audit of County finances.

(7) Fix and amend Commission districts so as to be nearly equal in population as practicable.

(8) Levy taxes and special assessments and to borrow money subject to the limitations as provided by the Constitution and Laws of Florida.

(9) Review budgetary requests, and make the final determination of appropriations for all operations of County government, except as provided by law.

(10) Enter into bilateral and multilateral contracts with adjoining Counties and with governmental units within or contiguous to the boundaries of the County for joint performance, or for performance by one governmental unit in behalf of the other or others of any function or activities which the County is authorized to perform.

(11) Make investigations of the affairs of the County and to make inquiries into the conduct of any County employee, department, office, or agency.

(12) Make appropriations for County purposes.

(13) Adopt rules and procedures as shall be necessary for the orderly transactions of the business of the Commission.

(14) Designate which officers and employees shall be bonded and fix the amount in form of such bonds.

(15) Require periodic and special reports concerning functions of any County department, office, or agency receiving County funds. Such reports, in the case of departments, offices, or agencies, subject to the direction and supervision of the County Executive Director, shall be submitted through the County Executive Director.

SECTION 210. POWERS AND DUTIES OF THE CHAIRPERSON OF THE COMMISSION.

The Chairperson shall serve as the chief officer of the legislative branch of County government and shall devote such time as is necessary to perform the duties of the office. The Chairperson, in addition to the powers and duties provided elsewhere in this Charter, shall have the specific powers and duties to:

(1) Serve as the legislative leader and presiding officer of the Commission.

(2) Appoint the Executive Director, subject to confirmation by a majority vote of all members of the Commission.

(3) Present annually in January of each year a "State of the County" message, setting forth programs and recommendations to the Commission.

(4) Nominate, subject to the confirmation by a majority vote of all members of the Commission, members of all appointed County boards, commissions, and advisory groups.

(5) Call all regular and special meetings of the Commission.

(6) Promote the welfare and best interest of the citizens of Escambia County by presenting from time to time policy recommendations to the Commission.

(7) Serve as the official representative and ceremonial dignitary for the government of Escambia County.

SECTION 211. PROCEDURE: MEETINGS; RULES AND JOURNAL; VOTING.

A. The Commission shall meet regularly, at least twice in every month, at such times, and places as the Commission may prescribe by rule. Special meetings may be held on the call of the Chairperson or of two (2) or more members and, whenever practicable, upon no less than twelve (12) hours effective notice to each member. All meetings of the Commission shall be public.

B. The Commission shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

C. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. A majority of the members of the Commission

shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Commission.

SECTION 212. COUNTY ORDINANCES AND RESOLUTIONS.

Every County ordinance and resolution shall be introduced and approved in accordance with the Constitution and Laws of Florida.

SECTION 213. RECORDING, PRINTING, AND CODIFICATION.

The Commission shall provide for the authentication and recording in full, in a properly indexed book kept for the purpose, of all minutes of meetings, ordinances and resolutions adopted by the Commission and the same shall, at all times, be a public record. The Commission, with the advice and assistance of the Director of Law, shall cause each ordinance and resolution having the force and effect of law and each amendment to this Charter to be printed as promptly as possible following its adoption; and the printed ordinance, resolutions and Charter amendments shall be sold to the public at reasonable prices to be fixed by the Commission. The Commission shall further maintain a codification of all ordinances. Such codification shall be published and made available for distribution on a continuing basis at a reasonable price fixed by the Commission.

SECTION 214. RESTRICTIONS ON ELECTED OFFICIALS AND COMMISSION.

Neither the Commission nor any of its members, except the Chairperson, shall in any manner dictate the appoint-

ment or removal of any County employee. Except for the purpose of inquiries under Section 209 of this Article, the Commission or members, in dealing with County employees who are subject to the direction and supervision of the Executive Director, shall deal solely through the Executive Director, and neither the Commission nor its members shall give orders to any such employee, either publicly or privately, any willful violation of the provisions of this subsection by a member of the Commission shall be sufficient grounds for an action for his removal from office, brought in a court of competent jurisdiction. No person elected or member of the Commission shall be appointed to any paid County administrative office of the County or paid county position during the period beginning on the date of his election and ending not less than one (1) year after the expiration of term for which he was elected.

ARTICLE III

ADMINISTRATIVE BRANCH: COUNTY EXECUTIVE DIRECTOR

SECTION 301. COUNTY EXECUTIVE DIRECTOR.

There shall be a County Executive Director, hereinafter referred to as the "Executive Director," who shall be appointed by the Chairperson of the Commission, subject to confirmation by a majority vote of all members of the Commission, for an indefinite term. The Executive Director shall serve at the pleasure of the Commission, and he may be removed at any time by a majority vote of all of its members. At least thirty (30) days before such removal is to become effective, the Commission shall furnish the Ex-

ecutive Director with a written statement setting forth its intention to remove him. In the event such a removal for any reason other than a conviction of a felony or malfeasance in office, he shall be granted two (2) months' termination pay.

SECTION 302. QUALFICATIONS.

The Executive Director shall be chosen solely on the basis of his executive and administrative abilities, with special reference to the duties of his office, as herein outlined. The Executive Director need not be a resident of Escambia County or of the State of Florida at the time of his appointment, but during the tenure of his office, he shall, within sixty (60) days, establish residence within Escambia County.

SECTION 303. VACANCY.

When a vacancy occurs in the office of the Executive Director, the Commission may designate one (1) qualified staff member to perform the duties of the Executive Director for a period not to exceed sixty (60) days.

SECTION 304. BOND: EXECUTIVE DIRECTOR.

Before entering upon his duties, the Executive Director shall give a bond to the Commission with a bonding company as surety, conditioned upon the faithful performance of his duties, to be approved by the Commission. The premium for said bond shall be paid by the County.

SECTION 305. SALARY: EXECUTIVE DIRECTOR.

The salary of the Executive Director shall be fixed from time to time by resolution, but shall not be decreased while he holds office.

SECTION 306. POWERS AND DUTIES OF EXECUTIVE DIRECTOR

The Executive Director shall be clerk of the Commission and chief administrative officer of the County, and he shall be responsible to the Commission as a whole for the proper administration of the affairs of the County, except as otherwise provided by the Constitution and the Laws of Florida, or by this Charter.

The Executive Director shall have custody of the seal of the Board of County Commissioners and shall affix the same to any paper or linstrument to which it shall be proper or necessary that the same be affixed. The Executive Director, as clerk of the Commission, shall give copies of instruments in his custody, to all persons requesting such instruments, attested by his signature and authenticated by said seal.

The powers and duties of the Executive Director shall include the following:

(1) He shall supervise and be responsible for the operation of all County departments, except as may be provided by this Charter.

(2) He shall be clerk and administrative officer to the Commission.

(3) He shall employ, in accordance with the Civil Service System, and, when necessary for the good of the County, shall suspend, discipline, or discharge any employee under his supervision, provided that the Executive Director shall report, at the next meeting hereafter of the Commission, any action taken by authority of this subsection.

(4) He shall submit annually to the Commission, a budget for the next fiscal year. The Executive Director

shall be responsible for the administration of the budget after its adoption by the Commission.

(4) He shall, in conjunction with the preparation of the annual budget, develop long-range fiscal plans for the County, such plans to be presented, as necessary, to the Commission for its review and adoption.

(5) He shall, in conjunction with the preparation of the annual budget, develop long-range fiscal plans for the County, such plans to be presented, as necessary, to the Commission for its review and adoption.

(6) He shall hold such other County offices and head such other County departments as the Commission may from time to time direct.

(7) He shall attend all meetings of the Commission, with a right to take part in the discussions.

(8) He shall prepare the agenda for each regular or special meeting and committee meetings of the Commission and shall supply facts pertinent thereto.

(9) He shall review, analyze, and forecast trends of County services, finances, and programs of all County departments and agencies receiving County funds; keep the Commission informed as to the conduct of County affairs and submit such other reports as the Commission requests.

(10) He shall see that the provisions of all franchises, leases, permits, and privileges granted by the County are observed.

(11) He shall coordinate all funding programs of all other governmental units or agencies with the County government.

(12) He shall see that all ordinances, resolutions, and orders of the Commission, and all laws of the State which are subject to enforcement by the Executive Director or by officers who are subject under this Charter to the Executive Director's direction and supervision, are faithfully executed.

(13) The Executive Director shall submit to the Commission at the end of the fiscal year a complete report on the finances and administrative activities of the County for the preceding year and prepare and make available for distribution to the public, within three (3) months after the end of the fiscal year, an annual report on County affairs during that fiscal year.

(13) The Executive Director shall submit to the Commission at the end of the fiscal year a complete report on the finances and administrative activities of the County for the preceding year and prepare and make available for distribution to the public, within three (3) months after the end of the fiscal year, an annual report on County affairs during that fiscal year.

SECTION 307. ADMINISTRATIVE CODE: INITIAL.

The Executive Director shall prepare an initial Administrative Code which shall set forth departmental organization of County government and the nature and scope of each department, together with all required rules and procedures for the operation of said departments, and a comprehensive budget procedure. Such Administrative Code shall, within nine (9) months after adoption of this Charter, be submitted to the Commission for review, amendment, and adoption. The Commission shall adopt the Administrative Code as submitted or amended within

three (3) months of the date submitted. If not adopted within three (3) months, the Administrative Code, as originally prepared by the Executive Director, shall be considered approved and shall remain in force until such time as it may be formally amended by the Commission. The Executive Director may, from time to time, submit any changes in any or all department organizations, including combinations, deletions, and creations of departments or divisions, and transfer of responsibilities between departments or divisions to the Commission for review, amendment, or adoption.

SECTION 308. TEMPORARY ABSENCE.

Should the Executive Director become ill or need to be absent from the County, he may designate one (1) qualified member of his staff to temporarily perform the duties of the Executive Director during his absence or disability. However, the person so designated shall not perform those duties for a period longer than fifteen (15) days without the approval of the Commission.

ARTICLE IV

ADMINISTRATIVE BRANCH: ADMINISTRATIVE ORGANIZATION

SECTION 401. GENERAL PROVISIONS.

A. Except as provided by this Charter, the activities under the direction and supervision of the Executive Director shall be distributed among such departments, offices and agencies as are established by this Charter, or may be established, merged, or abolished thereunder by the Administrative Code.

B. Except as provided by this Charter, each department shall be administered by an individual appointed by and subject under this Charter to the direction and supervision of the Executive Director. With the consent of the Commission, the Executive Director may serve as the head of one or more such departments, and with Commission approval, may appoint one person as head of two or more such departments.

C. The Department heads shall be appointed or removed by the Executive Director, subject to the approval by a majority of the Commission, except as otherwise provided for in this Charter.

D. The department heads shall be chosen solely on the basis of their qualifications, executive and administrative abilities, with special reference to the duties of the office. Department heads and County employees shall not be employed or receive compensation from more than one appointing authority.

SECTION 402. DEPARTMENTAL STRUCTURE.

The departmental organization of County government and the nature and scope of each department, together with all the required rules and procedures for the operation of said department, shall be set forth in the Administrative Code. The Administrative Code shall be adopted by and may be amended by the Commission. The Executive Director shall, from time to time make recommendations as to the promulgation, adoption, and amendment of the Administrative Code.

SECTION 403. INITIAL DEPARTMENTS AND OFFICES.

The following initial departments and offices are hereby established under this Charter:

(1) Department of Finance.

(2) Director of Law.

(3) Department of Personnel.

(4) Department of Utilities.

(5) Department of Community Services.

(6) Department of Transportation.

(7) Department of Parks and Recreation.

(8) Department of Public Works.

SECTION 404. DEPARTMENT OF FINANCE.

There shall be a Department of Finance headed by a Director of Finance. The Director of Finance shall be responsible for the preliminary preparation of the County budget as provided by the Laws of Florida, and shall be responsible for the administration of such duties as may be assigned under the Administrative Code and this Charter. The following duties are hereby specifically imposed under the Director of Finance:

(1) Maintaining the budget records of the Commission and County departments established under this Charter.

(2) Maintaining inventories and records of County property and equipment as required by laws.

(3) Supervision of central purchasing for the County.

(4) Devise a records system, including cost accounting, for any agency or institution which handles funds of the County.

(5) Devise a records system for maintaining inventories of fuels, equipment, supplies, and the distribution thereof.

SECTION 405. DEPARTMENT OF PERSONNEL.

There shall be a Department of Personnel, headed by a Director of Personnel. The Director of Personnel shall be responsible for preparing and recommending County personnel policy for all County departments, officers, and agencies, including classification of positions, pay and benefit plans, and the maintenance of a roster of all employees, their classification and pay scale.

SECTION 406. ESTABLISHMENT OF A CIVIL SERVICE SYSTEM.

There is hereby created a Civil Service Board for all classified employees of Escambia County, as defined herein, to which system all employees of the County who are now members of any of the present existing Civil Service System of the County, established under the Laws of Florida, shall be and are hereby declared to be automatically members of the Civil Service System of the County upon the effective date of this Charter.

SECTION 407. CIVIL SERVICE BOARD.

A. The Civil Service Board shall consist of five (5) members: one (1) shall be elected by the legislative body of the County, being the Commission of the County, and one (1) shall be elected by the School Board; one (1) shall be elected by the elected constitutional County officers, and

one (1) shall be elected by the employees of the County who are members of the classified service. The fifth member shall be named by the other four members. In the event said members cannot agree upon the fifth member within fifteen (15) days after said members take office, the chief judge of the circuit Court shall designate such member; the Board shall elect one of their members to be Chairperson, and one member to be Vice-Chairperson. Member shall receive no salary but shall be reimbursed for expenses incurred in the discharge of their official duties in accordance with Chapter 112.061, Florida Statutes.

B. The Civil Service Board of Escambia County is authorized to employ a competent secretary, legal counsel, and other additional help to carry out their duties under this Charter.

C. Each member of the Civil Service Board shall hold office for a period of four (4) years, and until his successor is elected and qualified.

D. Each appointing authority shall be authorized, empowered, and required to elect an alternate to the Civil Service Board who shall serve in the event the member so elected shall not be able to serve.

SECTION 408. QUALIFICATIONS AND ELECTIONS: CIVIL SERVICE BOARD.

A. Any qualified voter residing in Escambia County is eligible to be a member of the Civil Service Board, provided, however, that no person convicted of a crime involving moral turpitude, or who is an officer or employee of the County shall be eligible to hold office as a member of the Civil Service Board.

B. Any member of the Civil Service Board may be disqualified to hear and determine any cause if there exists any ground which under the Laws of the State of Florida would disqualify the judge of any court or which is ground of challenge for cause to any juror.

C. The first election of the Civil Service Board members under this Charter shall be held not less than ninety (90) days after the approval date of this Charter. The Civil Service Board members elected herein provided shall take office within ten (10) days after their election or appointment. The oath of office shall be administered to each of the Civil Service Board members by the Chairperson of the Commission.

SECTION 409. MEETINGS OF CIVIL SERVICE BOARD.

The Civil Service Board shall hold not less than one (1) regular meeting each month, and may hold special meetings when required for the transaction of business by the Board. Such meetings may be called by any two members of the Board or Secretary to the Board. Three (3) members shall constitute a quorum

SECTION 410. CLASSIFIED AND UNCLASSIFIED SERVICES.

A. County personnel is hereby divided into "classified service" and "unclassified service" as provided for in Chapter 74-480, Laws of Florida, as amended.

B. The Civil Service Board shall adopt, amend, and enforce a code of rules and regulations providing for examination, appointment, employment, promotion, standards of conduct, and efficiency of employees in the classified service.

C. The Civil Service Board shall be the sole authority vested with the power to approve and confirm or deny disciplinary action against any employee within the classified service.

SECTION 411. TRANSFER OF POWER.

Except where inconsistent with this Charter, the functions, responsibilities, duties and obligations of the existing Civil Service Board, established under Chapter 74-480, Laws of Florida, as amended, are hereby transferred and vested in the Civil Service Board as established under this Charter, and except where inconsistent with this Charter, the requirements under Chapter 74-480, Laws of Florida, as amended, shall remain in full force and effect.

SECTION 412. EXISTING BOARD CONTINUANCE.

Civil Service Board members existing at the time this Charter takes effect shall continue in office until their successors are elected and qualified as provided by this Charter, at which time the Board shall cease to exist.

SECTION 413. INDEPENDENT NATURE OF BOARD.

The Civil Service Board shall be independent of all members of administrative service of the County and shall conduct all hearings, trials, and proceedings of every character in an impartial, just manner, designed to promote justice and efficiency.

SECTION 414. EMPLOYEES UNDER ECONOMIC OPPORTUNITY ACT 1964.

No person shall hereafter become a member of the classified service of the County, notwithstanding any pro-

visions of this Article to the contrary, who is employed by the County solely for the purpose of participating in the federally sponsored Economic Opportunity Act of 1964, as amended; provided further that such employees waive any and all rights to participate in any pension system maintained for employees of the County, except Social Security benefits; provided, however, this Section may be waived in its entirety by ordinance enacted by the Commission.

SECTION 415. APPOINTMENT: DIRECTOR OF PERSONNEL.

The Director of the Department of Personnel shall be appointed by the Chairperson of the Commission, subject to confirmation by a majority vote of all members of the Commission.

SECTION 416. ANNUAL REPORT.

The Director of Personnel shall report annually, in written form, to each appointing authority concerning the administrative needs of the Service, the personnel and positions in the Service, and the Compensation provided therefor, the examinations held by the Board, the appointments made, service ratings and removals in the Civil Service, the operation of the rules of the Civil Service Board, and recommendations for promoting efficiency and economy in the Service, with details of expenditure and progress of work.

SECTION 417. DIRECTOR OF LAW: QUALIFICATIONS AND DUTIES.

The Director of Law shall be an attorney at law who shall have practied in the State of Florida for at least five (5) years. He shall be appointed by the Commission and be

the chief legal advisor of and attorney for the Commission and all departments and offices thereof in matters relating to their official powers and duties, except as otherwise provided by this Charter. It shall be his duty, either personally or by such assistance as he may designate, to perform all services incident to the Department of Law; to attend all meetings of the Commission; to give advice in writing, when so requested, to the Commission, the Executive Director, or the director of any department; to prosecute or defend, as the case may be, all cases to which the County may be a party; to prosecute all offenses against the ordinances of the County and for such offenses against the laws of the State that may be required by him by law; to prepare all contracts, bonds and other instruments in writing in which the County is concerned, and to endorse on each his approval of the form and the correctness thereof; and to perform such other duties of a legal nature as the Commission may by ordinance or resolution require. In addition to the duties imposed upon the Director of Law by this Charter or required of him by ordinance or resolution of the Commission, he shall perform any duties imposed upon the chief legal officers of counties by law.

ARTICLE V

ELECTED COUNTY OFFICERS CONTINUED

SECTION 501. COMPTROLLER.

The office of Comptroller, as provided by law, shall continue, and all laws applicable thereto shall continue at full force and effect, except where inconsistent with this Charter. The Comptroller shall qualify, be nominated,

elected, and serve as provided by the Constitution and Laws of Florida.

SECTION 502. PROPERTY APPRAISER.

The office of Property Appraiser shall continue, and all laws applicable thereto shall continue at full force and effect. The Property Appraiser shall qualify, be nominated, elected, and serve as provided by the Constitution and Laws of Florida.

SECTION 503. SHERIFF.

The constitutional office of Sheriff shall continue, and all laws applicable thereto shall continue at full force and effect. The Sheriff shall qualify, be nominated, elected, and serve as provided by the Constitution and Laws of Florida.

SECTION 504. SUPERVISOR OF ELECTIONS.

The constitutional office of Supervisor of Elections shall continue, and laws applicable thereto shall qualify, be nominated, elected, and serve as provided by the Constitution and Laws of Florida.

SECTION 505. TAX COLLECTOR.

The constitutional office of Tax Collector shall continue, and all laws applicable thereto shall continue at full force and effect. The Tax Collector shall qualify, be nominated, elected, and serve as provided by the Constitution and Laws of Florida.

ARTICLE VI

JUDICIAL SYSTEM

SECTION 601. JUDICIAL SYSTEM.

The judicial system of the Charter government shall be as provided by the Constitution and Laws of Florida.

SECTION 602. JUDICIAL OFFICES.

The office of the Clerk of Circuit Court, judges of the County Court, and all other offices of the various courts of the County shall continue, and all laws applicable thereto shall continue at full force and effect. The Clerk of Circuit Court shall qualify, be nominated, elected, and serve as is provided by the Constitution and Laws of Florida.

ARTICLE VII

FINANCIAL PROCEDURES

SECTION 701. FISCAL YEAR.

The fiscal year of the Charter government shall begin on the first day of October of each year and shall end on the following thirtieth day of September.

SECTION 702. UNIFORM BUDGETARY SYSTEM.

All County operations shall utilize a unified and uniform budget system. All fees collected by officers and employees of the County shall be deposited in the appropriate County fund as provided by law. The head of each County department, elected County official office or agency receiving County monies, shall furnish the Executive Director a detailed budget as may be required for the ensuing year's

operation, a capital program, and such additional information as may be required by the Executive Director or the Commission prior to July 1 of each year. On or before the first day of August of each year, the Director of the Department of Finance shall determine the estimated revenues of the County and, under the supervision of the County Executive Director, shall prepare a tentative budget with comparative anlysis from past years.

SECTION 703. BUDGET REVIEW.

Prior to September 15 of each year, the County Commission shall review the tentative budget and capital program as submitted by the Executive Director, together with the Executive Director's recommendations and the original budget request of any elected County official, and shall make such additions, deletions, or changes as may be necessary to insure the proper funding of operations of County government. The County Commission shall take action to insure that the total budget provides sufficient funds on an annual basis for all agencies and departments to carry out their duties and functions, as provided by this Charter, the Constitution, and the Laws of Florida.

SECTION 704. PUBLIC HEARING.

Prior to October 1 of each year, a public hearing shall be held on the County budget and capital program. After the public hearing, the Commission may adopt the budget and capital program with or without amendment. A notice of such public hearing and a summary of the budget of each elected official, department, and agency shall be published in a newspaper of general circulation in the County at least ten (10) days before the date of such hearing. Final adoption of the budget by the Commission shall be made prior to October 1 of each year.

SECTION 705. FINANCIAL DISCLOSURE.

Any agency or County officer receiving County appropriated funds, shall make a complete and full disclosure of all financial operations annually, including all sources of funds, disbursements, and budget of the agency or county officer. Each agency and County officer shall file such financial records with the Commission, and copies of such records shall be available to any members of the public at a reasonable cost.

SECTION 706. REQUIRED AUDIT.

The County Comptroller shall, within twelve (12) months of the next fiscal year, complete an audit of the accounts and other evidence of financial transactions of the County and of every County department and office. If the State makes such an audit, the Comptroller may accept it as satisfying the requirements of this Section.

ARTICLE VIII

ELECTIONS

SECTION 801. ELECTION PROCEDURES.

All elections shall be held and conducted pursuant to the provisions of Article VI of the Constitution and Laws of Florida, except as otherwise provided in this Charter.

SECTION 802. CANVASSING BOARD.

There shall be a Canvassing Board composed of the Supervisor of Elections, the Chairperson of the Commission, and the presiding judge of the judicial circuit in which Escambia County is situated, or any circuit judge in such judicial circuit appointed by the presiding judge.

ARTICLE IX

MISCELLANEOUS PROVISIONS

SECTION 901. LAWS CONTINUED.

All laws, ordinances, regulations and resolutions of the County shall remain operative except where inconsistent with this Charter.

SECTION 902. ADMINISTRATIVE CODE.

Any Administrative Code adopted and amended shall not be inconsistent with the provisions of this Charter.

SECTION 903. RIGHTS RESERVED.

All actions, rights of action, claims, contracts and obligations of persons, corporations, public bodies or agencies existing on the date this Charter becomes effective shall continue to be valid as if this Charter had not been adopted.

SECTION 904. PUBLIC DEBT AND BOND OBLIGATIONS CONTINUED AND RECOGNIZED.

All public debts, bonds, revenue certificates, revenue bonds and tax anticipation certificates heretofore incurred or issued by Escambia County shall remain valid and in full force and effect and shall be secured by the same sources of revenue as before the adoption of this Charter and to the extent necessary all ordinances, resolutions or other actions pertaining to same shall remain in full force and effect until payment in full of such public debts and securities.

SECTION 905. PROCEEDINGS CONTINUED.

All petitions, hearings and other proceedings pending before the former government shall remain in full force and effect as established under this Charter.

SECTION 906. CITIZENS' ADVISORY BOARDS.

All advisory boards existing at the date of the adoption of this Charter shall continue unless abolished by a majority vote of the full Commission. The Commission may create by resolution, specifying the duties and membership thereof, such advisory boards as it deems necessary. Members of such advisory boards shall be nominated by the Chairperson of the Commission, subject to confirmation by a majority vote of the full Commission.

SECTION 907. BOARD OF TAX ADJUSTMENT.

The Board of Tax Adjustment, as provided by the Laws of Florida, shall continue under this Charter.

SECTION 908. PETITION AND ORDINANCE.

Changes in this Charter or an ordinance may be proposed by: (1) a petition signed by at least ten percent (10%) of the number of registered voters in Escambia County. When such change is filed with the Supervisor of Elections, it shall be submitted to the voters at an election to be held in accordance with the requirements of the Constitution and Laws of Florida, and if approved at the election, the change shall become a part of this Charter.

SECTION 909. NOTICE OF CHARTER AMENDMENT REFERENDUM.

In addition to any other notice requirements provided by this Charter or general law, whenever a Charter amendment is submitted to referendum, the exact language of the proposed Charter amendment or amendments, shall be published at least twice in a newspaper of general circulation in the County. One notice shall be published not more than forty-five (45) days nor less than thirty (30) days prior to the referendum election, and another notice shall be

published not more than ten (10) days nor less than five (5) days prior to the referendum election.

SECTION 910. CODE OF ETHICS.

The Code of Ethics shall be the Standards of Conduct for Public Officers and employees as provided by general law, and shall have full effect on all employees and office holders under the Charter government. Penalty for violation shall be provided by ordinance, or as otherwise provided by general law.

SECTION 911. PROHIBITIONS.

No person shall be appointed to or removed from or in any way favored or discriminated against with respect to, any County position or appointive County administrative office because of sex, race, political or religious opinions or affiliations.

ARTICLE X

TRANSITION PROVISIONS

SECTION 1001. REFERENDUM AND BALLOT.

The election on this Charter shall be held in accordance with the requirements of the Constitution and Laws of Florida. The question on the ballot shall be as follows:

"SHALL THERE BE A HOME RULE CHARTER FOR ESCAMBIA COUNTY, FLORIDA, PROVIDING FOR THE RESTRUCTURING OF COUNTY GOVERNMENT, WHICH SHALL TAKE EFFECT ____, AS PROPOSED BY CHARTER DATED ____."

FOR CHARTER:

AGAINST CHARTER:

SECTION 1002. FORM OF NOTICE.

The form of notice of the election by which this Charter shall be submitted to referendum shall contain the complete text for this Charter.

SECTION 1003. EFFECTIVE DATE.

This Charter shall become law when approved by a majority of those electors voting on the matter in an election to be held in the County under the provisions of the Constitution and the Laws of Florida. The Charter government shall assume all powers and duties provided by this Charter on the first day of ____, the effective date of this Charter.

SECTION 1004. INITIAL CHARTER COUNTY EXECUTIVE DIRECTOR.

Upon the election of the additional two (2) County Commissioners, the seven (7) member Commission, immediately upon the assumption of their duties, shall initiate the necessary procedures for employing the initial Executive Director as established by this Charter. It shall be the obligation of the Commission to employ the initial Executive Director within three (3) months of the date on which they take office. Pending the selection of the Executive Director, the Chairperson of the Commission shall be empowered to appoint an interim Executive Director with powers as may be established by the Commission.

SECTION 1005. DISTRICTS.

The initial Commission districts shall be constituted as the constitutional Commission districts would have been constituted if this Charter had not been adopted.

SECTION 1006. DEPARTMENTS CONTINUED.

Except as provided by this Charter, all County departments and agencies shall continue until reorganized in accordance with the provisions of this Charter and the Administrative Code.

SECTION 1007. EMPLOYEES' CONTINUATION.

All employees of the former County government shall, on the effective date of this Charter, become employees of the Charter government without loss of benefits. Salaries of all employees shall be continued at no less than the same level as on the date of the referendum approving this Charter, unless at such time as the Commission shall provide for overall adjustment for all County employees.

BRIEF ANNOTATION OF CHARTER PROVISIONS

Plan of County Government

If any structure of government is unsophisticated and provincial, it is certainly the Commission form of government established in 1885 for Florida counties, which were then primarily rural and agrarian.

The 1968 Constitution provides for home rule powers, and it is now possible for the people to adopt a Charter and thus modernize and restructure the outdated form of local County government. The Charter will provide a more efficient and responsive form of government for

Escambia County. The plan of representation and the pattern of administration will go a long way towards fostering responsible and accountable County government.

The Charter provides the County with a written plan of government which may be modified and amended at the local level rather than having to look to the provisions of the general or special laws for determination of how County government is to be operated. If any disruption occurs, it will be due to the personalities involved and not the system developed.

The Charter maintains all constitutional elective officers which insures accessibility and effectively pinpoints accountability to the voter.

Powers of the County Commission

The language of the Charter in no way detracts from or restricts the legislative powers of the County Commissioners granted under the constitution and laws of Florida. The Commission has the specific powers and duties to adopt rules of procedure as shall be necessary for the orderly transaction of business of the Commission.

The County Commission, under the Charter, must act within the general framework of the duties enumerated under the Charter, the constitution, and the provisions of general law which prevails with or without the County Charter.

The procedure for adopting and repealing County Ordinances is clearly outlined in Florida General Law, Chapter 125.66-125.69. However, the Charter expands the legislative powers of the County Commission, which is not prohibited by the constitution and general laws.

Limitation of Terms – County Commissioners

The limitation of terms is restricted to two consecutive terms for any County Commissioner. The Charter does not provide a limitation on the number of years of public service at the County level. The limitation on County Commissioners was included only to insure that no office of the governing (legislative) body be indefinitely reserved for any particular individual. The limitation also insures that a meaningful check is placed on district representation to effectively eliminate the possibility of ward politics.

Residency Requirements of Members of Board of County Commissioners

It is important to establish residency requirements for all Commission offices. The Charter establishes a minimum of one-year residency in the County for all Commission officers, and six months' district residency within the respective district. Currently, there is no requirement other than residing in the district at the time of qualifying. This would allow someone totally unfamiliar with the County or district to run for office.

Initiative and Referendum Provisions

The initiative and referendum provisions of the proposed Charter are additional measures which insure greater citizen involvement and participation in the County government legislative process. There are no provisions for initiative and referendum under the present form of government. This provision guarantees the citizen the right to change the form of County government. While it may be possible for a special interest group to obtain sufficient signatures to meet the petition requirements, it should be noted that this would only insure that the ques-

tion be placed on the ballot. A majority of the electors in the County, in a referendum, must approve any petition proposal. A ten percent of the electors' signature requirement is high enough to eliminate abuses and low enough to allow the petition process to be meaningful.

Executive Director – Authority

The current position of the County Executive Director was established by the weakest possible method – by a simple Commission resolution which could be abolished by the vote of three of the County Commissioners.

The line of authority and chain of administrative command under the current structure of County government is unclear and its legality questionable. The basic authority of the County Executive Director, as established in the Charter, separates the administrative and legislative functions of County government and clearly provides that the County Executive Director shall be the Chief Administrative Officer of the County.

The Charter has clearly established, on a sound legal basis, the position of County Executive Director which can only be changed or abolished by a vote of the County electors. The Charter does not give any tenure to the County Executive Director, and the Commissioners should not be bound by the requirements imposed by tenure. The Commissioners must be able to dismiss the Executive Director, otherwise, this plan of government would not work.

County Executive Director – Qualifications

The Charter establishes guidelines for the qualifications of the County Executive Director. The only specific requirements are that he maintain residence in the County

during his tenure of office and not engage in any other business or occupation. To include stringent requirements as to education and experience, might meet the test today but fall short in the future. The Charter Government Study Committee felt that the County Commission should be given the flexibility of establishing prerequisites at the time the job is to be filled. Numerous educational degrees do not insure that an individual will be a capable administrator. By the same token, extensive work experience does not guarantee competency. In a representative form of government, certain responsibility and faith must be placed in elected representatives to employ the best qualified person.

Department Heads – Selection

This Charter clearly gives the County Executive Director the authority to select the department heads that will be responsible to the County Executive Director (with approval of the County Commissioners). A County Executive Director that does not have the support of the County Commission will not remain in office, and therefore the approval of the County Commission of such appointments should be routine. It will, however, provide a very necessary check and balance system that is so vital in any form of government.

The requirement that the County Commission must approve all dismissals of department heads will grant to those persons taking the job as department heads in County government that there will be some appeal process if they should temporarily be at cross purposes with the County Executive Director or have a personality conflict.

Non-Interference Language

The non-interference language in the Charter is for good reasons – to keep individual members of the Commission from trying to exert their individual opinions and personal prejudices on the County department heads and employees. They must be free to carry out the administrative functions of County government through the Executive Director, and in accordance with the policies established by the Board of County Commissioners. Without this proper chain of command, the department heads and the employees may be caught between individual Commissioners or the Commission and the Executive Director.

Administrative Code

The provisions for an Administrative Code provides the procedure for establishing the initial Administrative Code. The Charter requirement for an Administrative Code is significant in that the nature and scope of each department and all rules and responsibilities and procedures for County departments must be established in written form and approved by the Commission. The line authority structure of current County government is "fuzzy" at best. The Administrative Code provides a way for the department heads, the employees, the citizens, and the elected officials to know who is suppose to be doing what. The Administrative Code clearly pinpoints responsibility and accountability according to the established policy of the Commission.

Chairperson of Commission

Under the proposed Charter, the Chairperson of the County Commission is considered the legislative leader of the County and, as such, is responsible for the various

legislative programs considered by the County, and is a person that the Commissioners and the citizens will look to for leadership.

The Chairperson will be more responsive to the people and will give people, for the first time, the opportunity to pinpoint responsibility. With this responsibility, it follows that the Chairperson should have a greater voice in the selection of the County Executive Director and the Department of Personnel, the two most important positions in the County government. Obviously, the Chairperson is not going to be able to appoint someone for these positions that is not acceptable to the majority of the Commission, and as a practical matter, the selection of these persons will be a joint effort of the entire Commission.

Separation of Powers

The proposed Charter clearly establishes a separation of responsibilities and functions and legally divides legislative and administrative duties. The division of powers has been clearly implemented throughout the Charter as a careful reading will indicate. The Charter permits the use by the Commission of all powers granted by the Charter, or General Law, and provides for an orderly pattern of action of which the County Commission can transact its official business.

County and Municipal Ordinances

In order to meet the requirements of the Florida Constitution, Article VIII, Section 1(g), which states: "The Charter shall provide which shall prevail in the event of conflict between County and municipal ordinances." Therefore, the Charter provides that County ordinances

shall prevail Countywide, except where a County ordinance is in conflict with a municipal ordinance. In those cases, the municipal ordinance within the municipality will prevail.

Representation

The plan of representation in the proposed Charter establishes a seven (7) member County Commission whose duties are legislative in nature. The plan will provide a combination of district and at-large representation. Five (5) Commissioners will be elected from districts averaging approximately 50,000 persons, and two (2) Commissioners will be elected at large.

District representation will cut the mounting cost of running for Countywide election, and the increasing reliance on special interest for financing. The districts will also insure meaningful representation and allow close identification and scrutiny of the district Commissioners. The district Commissioners will be closer to the people who elected them and more responsive to district problems and needs. The district Commissioners will have a ready and in-hand knowledge of their districts. The two (2) Commissioners elected at large will provide balanced representation; therefore, the Charter provides for a combination of district and at-large representation.

There may be an argument that district Commissioners may be responsive to district pressures first and consider vital Countywide matters second. It is based upon the assumption and not fact and does not take into consideration the fact that the County Commission can only act as a unit in passing County laws or establishing policy or issuing administrative directives.

With five of the seven County Commissioners elected by districts, there will be a better opportunity for voter identification. In a republican form of government, representation must be meaningful to be responsive and effective. There is no magic number for a representative body to insure smooth, efficient, and representative government. The present five-member Commission was originally established in 1885 when Escambia County had a population of approximately fifteen hundred persons.

The Charter Government Study Committee felt that the Commission should be enlarged to insure that the plan of representation would be equitable, representative, and responsive. The language of the Charter was drafted to insure compliance with the Constitutional one-man, one-vote principle, and the provisions of Article VIII, Subsection (1) and (3) of the Florida Constitution.

Budget Preparation

Currently, under special law, the Comptroller (elected official) is required to prepare the County budget for submission to the Board of County Commissioners. Since a budget is clearly an administrative and management tool, it was felt that the budget preparation should be in the hands of the administrative and legislative branch of County government; therefore, the Charter clearly places the responsibility of the preparation of the budget, which is essentially a management tool, with the County Executive Director. The mechanics of putting the budget in order logically falls under the responsibility of the Director of Finance of the Department of Finance.

The Committee sees no conflict in having the Executive Director and the Director of Finance working together to prepare the budget since both positions are administrative

in nature, but felt that it was essential that the Charter clearly establish who has the responsibility for final preparation and submission of the budget to the County Commission for approval.

Audits

The County expenditures are now approaching $40 million a year. Most of which is being expended without the control of regular audits. State law requires that there be post audits of County governments and their departments by the Auditor General of the State. However, there is no specific requirement that there be annual post audits, and no such audits are being performed on an annual basis by the State.

Considering the size and scope of the operation of Escambia County's government, the committee felt that it was advisable to require annual audits. However, if the State makes an audit of the County or any of its agencies within one year after the fiscal year, then it will not be necessary for the Comptroller to make an audit. This provision merely provides a check to insure good business practices in the event the State does not perform its statutory duty. All major businesses in the country follow this good business practice.

Department of Personnel and Civil Service Board

Personnel policy and pay is an administrative function and, as such, should be under the legislative and administrative body of the County. The present Civil Service Board has broad powers of personnel policies and provides that the Civil Service Board determine and establish pay scales for all classified positions.

The Charter provides that all County departments, of-

ficers, and agencies utilize administrative services of the County Personnel Department. The Charter does not outline each and every duty required of the Personnel Department but does require that they be outlined in the Administrative Code. The Charter permits reorganization of this department as needed. However, the Charter does provide for a Civil Service Board that has the responsibility to enforce a code of rules and regulations providing for examination, appointment, employment, promotion, standards of conduct, and efficiency of employees in the classified service. It also provides for job protection of classified positions and the elimination of arbitrary capricious action against employees by the administrative staff or legislative body. The Charter also provides protection for all existing employees under the present Civil Service System.

OPTIONAL METHODS OF COUNTY GOVERNMENT

The "County Administration Law of 1974," which is Part III of Chapter 125 of the Florida Statutes, authorizes the Board of County Commissioners to pass a County ordinance adopting the "County Administration Law of 1974," which would accomplish the separation of administrative and legislative powers of County government and would provide some of the changes outlined in the proposed Charter (*See pages 28-30*).

Part IV of Chapter 125 of the Florida Statutes is known as the "Option County Charter Law" and provides an alternate way to Charter government; therefore, the Board of County Commissioners may propose by ordinance a Charter consistent with the provisions of this part and provide for a special election pursuant to the procedures established in Section 125.64, Florida Statutes, without

regard to the time limitation contained in Section 125.645(e). This part gives to the Board of County Commissioners the following optional forms of County government:

(1) County Executive Form *(See pages 1210-17);*

(2) County Manager Form *(See proposed Charter, pages 1161-94); and*

(3) County Chairman/Administrator Plan *(See pages 1210-17).*

CHAPTER 125, FLORIDA STATUTES
COUNTY GOVERNMENT
PART III
COUNTY ADMINISTRATION

125.70 Short title.
125.71 Purpose.
125.72 Application of the part.
125.73 County administrator; appointment, qualifications, compensation.
125.74 County administrator; powers and duties.

125.70 SHORT TITLE.– This part shall be known and may be cited as the "County Administration Law of 1974."

125.71 PURPOSE.– It is the legislative intent that it is necessary to authorize a form of county administration that best assures an adequate and efficient provision of services to the citizens in this state, that provides for coordinated administration of county departments to better

protect the health, welfare, safety, and quality of life of the residents in each of the more urbanized counties, and that places in the hands of a county administrator the multitude of details which must necessarily arise from the operation of a county as a unit of local government and, thus, enables the board of county commissioners to perform freely, without unnecessary interruption, its fundamental intended purpose of making policies within the framework of law applicable to county government in this state. It is the further legislative intent to provide a formula and structure for the economic and efficient conduct of county affairs by making the county administrator established by this act responsible for handling of all things necessary to accomplish and bring to fruition the policies established by the board of county commissioners.

125.72 APPLICATION OF THE PART.– The provisions of this part may apply to any county in this state which has not adopted a charter form of county government upon passage of a county ordinance by the governing body of such county expressly adopting this part.

125.73. COUNTY ADMINISTRATOR; APPOINTMENT, QUALIFICATIONS, COMPENSATION.–

(1) Each county to which this part applies shall appoint a county administrator, who shall be the administrative head of the county and shall be responsible for the administration of all departments of the county government which the board of county commissioners has authority to control pursuant to this act, the general laws of Florida, or other applicable legislation.

(2) The county administrator shall be qualified by administrative and executive experience and ability to serve as the chief administrator of the county. He shall be ap-

pointed by an affirmative vote of not less than three members of the board of county commissioners and may be removed at any time by an affirmative vote, upon notice, of not less than three members of the board, after a hearing if such be requested by the county administrator. The administrator need not be a resident of the county at the time of his appointment, but during his tenure in office he shall reside within the county.

(3) The compensation of the administrator shall be fixed by the board of county commissioners unless otherwise provided by law.

(4) The office of county administrator shall be deemed vacant if the incumbent moves his residence from the county or is, by death, illness, or other casualty, unable to continue in office. A vacancy in the office shall be filled in the same manner as the original appointment. The board of county commissioners may appoint an acting administrator in the case of vacancy or temporary absence or disability until a succesor has been appointed and qualified or the administrator returns.

125.74. COUNTY ADMINISTRATOR: POWERS AND DUTIES.–

(1) The administrator may be responsible for the administration of all departments responsible to the board of county commissioners and for the proper administration of all affairs under the jurisdiction of the board. To that end, the administrator may, by way of enumeration and not by way of limitation, have the following specific powers and duties to:

(a) Administer and carry out the directives and policies of the board of county commissioners and enforce all orders, resolutions, ordinances, and regulations of the board to assure that they are faithfully executed.

(b) Report to the board on action taken pursuant to any directive or policy within the time set by the board and provide an annual report to the board on the state of the county, the work of the previous year, and any recommendations as to actions or programs he deems necessary for the improvement of the county and the welfare of its residents.

(c) Provide the board, or individual members thereof, upon request, with data or information concerning county government and to provide advice and recommendations on county government operations to the board.

(d) Prepare and submit to the board of county commissioners for its consideration and adoption an annual operating budget, a capital budget, and a capital program.

(e) Establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection with the budget and supervise and administer all phases of the budgetary process.

(f) Prepare and submit to the board after the end of each fiscal year a complete report on the finances and administrative activities of the county for the preceding year and submit his recommendations.

(g) Supervise the care and custody of all county property.

(h) Recommend to the board a current position classification and pay plan for all positions in county service.

(i) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures.

(j) Organize the work of county departments, subject to an administrator and adopted by the board, and review the departments, administration, and operation of the county and make recommendations pertaining thereto for reorganization by the board.

(k) Select, employ, and supervise all personnel and fill all vacancies, positions, or employment under the jurisdiction of the board. However, the employment of all department heads shall require confirmation by the board of county commissioners.

(l) Suspend, discharge, or remove any employee under the jurisdiction of the board pursuant to procedures adopted by the board.

(m) Negotiate leases, contracts, and other agreements, including consultant services, for the county, subject to approval of the board, and make recommendations concerning the nature and location of county improvements.

(n) See that all terms and conditions in all leases, contracts, and agreements are performed and notify the board of any noted violation thereof.

(o) Order, upon advising the board, any agency under his jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis if he deems it necessary for the proper and efficient administration of the county government to do so.

(p) Attend all meetings of the board with authority to participate in the discussion of any matter.

(q) Perform such other duties as may be required of him by the board of county commissioners.

(2) It is the intent of the Legislature to grant to the county administrator only those powers and duties which are administrative or ministerial in nature and not to delegate any governmental power imbued in the board of county commissioners as the governing body of the county pursuant to Section 1(e), Art. VIII of the State Constitution. To that end, the above specifically enumerated powers are to be construed as administrative in nature, and in any exercise of governmental power the administrator shall only be performing the duty of advising the board of county commissioners in its role as the policy-setting governing body of the county.

CHAPTER 125, FLORIDA STATUTES
COUNTY GOVERNMENT
PART IV
OPTIONAL COUNTY CHARTERS

125.80 Short title.
125.81 Definitions.
125.82 Charter adoption by ordinance.
125.83 County charters; general provisions.
125.84 County charters; optional forms.
125.85 County charters; executive responsibilities.
125.86 County charters; legislative responsibilities.
125.87 Administrative code; adoption and amendment.
125.88 Civil service.

125.80 SHORT TITLE.– This part shall be known and may be cited as the "Optional County Charter Law."

125.81 DEFINITIONS.– As used in this part, the following words and terms shall have the meanings ascribed to them in this section except when the context clearly indicates otherwise:

(1) "County charter" means the charter by which county government in this state may exercise all powers of local self-government not inconsistent with general law and as adopted by a vote of the electors of the county.

(2) "Form of county government" is that form adopted by the electors providing for the operation of a county government operating under a charter which shall be provided in the charter.

(3) "Officer" means all officials of county government operating under a charter which shall be provided in the charter.

125.82 CHARTER ADOPTION BY ORDINANCE. – As a supplemental and alternative way to the provisions of ss. 125.60-125.64, inclusive, the board of county commissioners may propose by ordinance a charter consistent with the provisions of this part and provide for a special election pursuant to the procedures established in s. 125.64 without regard to the time limitation contained in subsection 125.64(3).

125.83 COUNTY CHARTERS: GENERAL PROVISIONS.–

(1) A county charter may prescribe one of the optional forms of government herein authorized, and shall clearly define the responsibility for legislative and executive functions in accordance with the provisions of this chapter.

(2) The county charter shall require all elective offices to be filled only by qualified voters of the county. All ap-

pointed offices may be filled by nonresidents of the county; however, the charter may require that, upon appointment, such officers shall reside in the county during their tenure in office.

(3) The county charter shall define "vacancy in office" and provide methods for filling such vacancy.

(4) The county charter shall provide that the salaries of all county officers shall be provided by ordinance and shall not be lowered during an officer's term in office.

(5) The county charter shall provide a schedule for the transfer of governmental functions into the charter form of government as adopted.

125.84 COUNTY CHARTERS: OPTIONAL FORMS. – Any county desiring to adopt a county charter shall provide for one of the following optional forms of government:

(1) COUNTY EXECUTIVE FORM. – The county executive form shall provide for governance by an elected board of commissioners and an elected county executive and such other officers as may be duly elected or appointed pursuant to the charter. The elected county executive shall exercise the executive responsibilities assigned by the charter and shall, in addition, approve each ordinance by signing it or allowing it to become approved without signature by failing to veto it or may veto any ordinance by returning it to the clerk of the board within 10 days of passage with a written statement of his objections. If two-thirds of the members of the board present and voting and constituting a quorum shall, upon reconsideration, vote for the ordinance, the executive's veto shall be overridden and the ordinance shall become law in 10 days or at such other time as may be provided in the ordinance

or by resolution of the board, without the executive's signature.

(2) COUNTY MANAGER FORM.– The county manager form shall provide for governance by an elected board of commissioners and an appointed county manager and such other officers as may be duly elected or appointed pursuant to the charter. The county manager shall be appointed by, and serve at the pleasure of, the board and shall exercise the executive responsibilities assigned by the charter.

(3) COUNTY CHAIRMAN/ADMINISTRATOR PLAN.– The county chairman/administrator plan shall provide for governance by an elected board of commissioners, presided over by an elected chairman who shall vote only in case of tie, and an appointed county administrator and such other officers as may be duly elected or appointed pursuant to the charter. The county administrator shall be appointed by, and serve at the pleasure of, the chairman. The chairman shall exercise, in conjunction with the administrator, the executive responsibilities assigned by the charter.

125.85 COUNTY CHARTERS; EXECUTIVE RESPONSIBILITIES.– The executive responsibilities and power of the county shall be assigned to, and vested in, the appropriate executive officer, pursuant to the optional form adopted under s. 125.83, and shall consist of the following powers and duties:

(1) Report annually, or more often if necessary, to the board of commissioners and to the citizens *(on) the state

*NOTE.– "On" substituted for "of" by the editors.

of the county, the work of the previous year, recommendations for action or programs for improvement of the county, and the welfare of its residents;

(2) Prepare and submit to the board for its consideraton and adoption an annual operating budget, a capital budget, and a capital program; establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection therewith; and supervise and administer all phases of the budgetary process;

(3) Administer and carry out the directives and policies of the board of county commissioners and enforce all orders, resolutions, ordinances, and regulations of the board, the county charter, and all applicable general law, to assure that they are faithfully executed;

(4) Supervise the care and custody of all county property, institutions, and agencies;

(5) Supervise the collection of revenues, audit and control all disbursements and expenditures, and prepare a complete account of all expenditures;

(6) Review, analyze, and forecast trends of county services and finances and programs of all boards, commissions, agencies, and other county bodies and report and recommend thereon to the board;

(7) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures as may be authorized by the administrative code;

(8) Negotiate contracts, bonds, or other instruments for the county, subject to board approval; make recommendations concerning the nature and location of county

improvements; and execute services determined by the board;

(9) Assure that all terms and conditions imposed in favor of the county or its inhabitants in any statute, franchise, or other contract are faithfully kept and performed;

(10) Supervise, direct, and control all county administrative departments;

(11) Apppoint, with the advice and consent of the board, all appointed departmental heads, who shall serve at his pleasure, and employ pursuant to appropriation and the administrative code, such personnel as necessary to administer county functions and services;

(12) Order, at his discretion, any agency under his jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis if he deems it necessary for the proper and efficient administration of the county government to do so; and

(13) Any other power or duty which may be assigned by county charter or by ordinance or resolution of the board.

125.86. COUNTY CHARTERS: LEGISLATIVE RESPONSIBILITIES. – The legislative responsibilities and power of the county shall be assigned to, and vested in, the board of county commissioners and shall consist of the following powers and duties:

(1) Advise and consent to all appointments by the executive for which board confirmation is specified;

(2) Adopt or enact, in accordance with the procedures provided by general law, ordinances and resolutions it deems necessary and proper for the good governance of the county;

(3) Appoint a clerk to the board who shall serve at its pleasure and keep the records and minutes of the board;

(4) Approve the annual operating and capital budgets and any long-term capital or financial program;

(5) Conduct continuing studies in the operation of county programs and services and take action on programs for improvement of the county and the welfare of its residents;

(6) Adopt, and amend as necessary, a county administrative code to govern the operation of the county;

(7) Adopt, pursuant to the provisions of the charter, such ordinances of county-wide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform county-wide enforcement and may provide the county government powers in relation to those areas as recognized and as may be amended from time to time by the people of that county; and

(8) All other powers of local self-government not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the county charter.

125.87. ADMINISTRATIVE CODE; ADOPTION AND AMENDMENT.–

(1) Following the organization of the first board of county commissioners elected pursuant to a charter, the board of commissioners shall adopt an administrative code organizing the administration of the county government and setting forth the duties and responsibilities and

powers of all county officials and agencies pursuant to the provisions of the charter.

(2) The administrative code shall be effective upon adoption or as otherwise provided therein, and all existing agencies shall assume the form, perform the duties, and exercise the power granted them under the administrative code and shall do so in the manner prescribed.

125.88 CIVIL SERVICE.–

(1) Upon adoption of an administrative code and also upon the adoption of a charter, all officers and employees in the classified service of the county shall be transferred to the department, division, or agency to which the functions, powers, and duties in which they were engaged are allocated under the administrative code. Such transfer shall be without examination or diminution of existing compensation, pension or retirement rights, privileges, or obligations of any such officer or employee existing immediately prior to the referendum at which the charter was adopted. It is the intent of the Legislature that the adoption of any plan required by the charter shall not adversely affect the civil service tenure, pension, seniority, or promotional rights of any county officer or employee in the classified service.

(2) The board of county commissioners of any county adopting a charter may, by ordinance, administer the merit system through a county department of civil service unless otherwise provided by the charter. Such administration shall include classification, recruitment, examination, establishment of eligibility lists, grievances, compensation, and other conditions of employment pursuant to law.

RECOMMENDATIONS AND OBSERVATIONS

Legislative – Administrative Functions

The chief role of the County Commission should be to adopt policy. It should be a legislative body rather than an administrative body. There are two principles which should be observed in maintaining a distinction between legislative and administrative functions: (1) the legislative body cannot delegate its powers of a legislative character, and (2) the administrative details and the responsibility for implementation of policies should be delegated to the Executive Director.

Although there have been some significant improvements over the last few years, the Board of County Commissioners still spends a great deal of its time in exercising administrative functions which can be more properly delegated to the Executive Director of the County. It is a cardinal rule of public administrative practice that authority is increased through delegation. The time that is spent on handling routine administrative matters can be much better utilized in the development, formulation, and evaluation of policies by the Board of County Commissioners. Specific attention should be given to relieving the County Commission of the necessity to concern itself with routine matters which can be handled administratively.

Presently, it would appear that adherence to Commission policy is a rather haphazard occurrence. The chief problem would appear to be effective communication which guarantees employee awareness of County policy. In order to resolve this problem, steps should be taken to compile and distribute an Administrative Procedures Manual to all County department heads or supervisors. This manual should be updated on a periodic basis, and its

distribution should be combined with in-service training for supervisory personnel.

The establishment of an Executive Director's office with assigned administrative functions will make the office of County Commissioner more attractive to a broader segment of population interested in government service who are willing and able to serve but are unable to give the necessary time for administrative and legislative responsibilities.

The principle of "unity of command" is not observed in County operations. It is a common occurrence that County department heads and subordinates are subject to orders from both the County Executive Director and individual members of the Board of County Commissioners. It is not unusual that subordinates are subject to conflicting orders which play havoc with work schedules and subject County personnel to unreasonable and unnecessary pressures.

There is an old saying. "A man cannot serve two masters," which is known in public administration as the principle of "unity of command." A subordinate who is subject to orders from several superiors will be inefficient, confused, and, ultimately, irresponsible.

A vast majority of local governments operate with governing bodies whose responsibilities are legislative in nature, i.e., enacting laws and establishing administrative policies.

The functions and responsibilities of the County Department of Human Resources and the Community Action Program provides various social services with emphasis on meeting the needs of disadvantaged residents. The services provided by these two agencies should be con-

solidated in a single county department so as to eliminate the overlapping responsibilities.

Budgets

The annual budget is first and foremost a planning and policy statement. An appropriations process is one of the most basic and important functions of a legislative body and, therefore, deserves special attention to insure that the legislative body retains control of that process. *Responsibility for budget formulation and implementation should be delegated to the Executive Director's office, who has the responsibility of providing the Commission with information regarding the fiscal impact of the continuation of existing programs and initiation of new programs.*

Currently, in Escambia County, responsibility for budget formulation, adoption and implementation is shared between the Board of County Commissioners, the elected County Comptroller, and the State. As a result, the Board of County Commissioners does not have full control of one of its most important functions. Additionally, there are other elected officials who have the statutory right to seek amendment of the annual budget through direct appeal to the State. Therefore, the County Commission, which has the legal responsibility and the political liability for raising taxes, does not exercise control over activities which generate demands for local revenues.

Auditing

In order to maintain the fiscal integrity of the system and the confidence of the people who ultimately support local government through their taxes, responsibility for pre-audit and post-audit of expenditures should remain under an independent elected official who is isolated from political pressures by the Board of County Commis-

sioners. It is important that the people of the community have confidence in the financial integrity of the system. This principle is consistent with sound government financial practices and is utilized by a majority of state governments, large municipalities, and urban counties.

Non-Profit Public Agencies

Require all non-profit public agencies supported by any form of local tax monies or fees for service to file with the Board of County Commissioners a monthly activity report, and on or before September 30 of each year, file with the Board of County Commissioners a balance sheet and statement of operations for the ensuing year, showing all assets, liabilities, and equities' income and expenditures of the respective agency. They should also be required to file a list of employee complement and their salaries, and should any agency fail to comply with these provisions, the Board of County Commissioners should withhold releases of appropriations until such time as the ageny is in compliance.

Very often private non-profit public agencies are in a position to administer programs more efficiently than a local unit of government. When the Board of County Commissioners assumes direct responsibility for the operation of a given program, there occurs substantial overhead cost in the form of fringe benefits, Civil Service, and other requirements imposed by law. Additionally, agencies receive support from both the City of Pensacola and the Board of County Commissioners. If the County were to assume direct responsibility for the operation, it is doubtful that the City would continue to fund the operations of a County department. Through joint funding, the City and the County have been able to initiate and support many health and social service programs at a minimal cost.

County-State-Federal Connections.

Few citizens are aware of the County's ties to the state and federal government, the limitations of County powers, and the connection between these and the inability of the County to respond to local problems. The demand for additional public services by the people, politics, inflation, and legislative acts (federal and state) have played a substantial part in local governmental growth and the increased expenditure of tax monies. However, due to the mandated nature of many of the programs by state and federal government, efforts to control this expansion at the County level have not been satisfactory.

Federal and state aid is another means of federal and state influence over counties. To receive this aid, in most instances, counties must meet certain standards or comply with certain regulations. While many of these requirements have helped raise standards in County administration, others have unduly restricted County discretion.

State and federal aid has been invaluable to counties in meeting rising cost; however, it can distort expenditure patterns by encouraging counties to expend funds in one administrative area to match grant monies, while reducing expenditures for other needed functions which do not receive grant funds.

Government Cost Stabilization

Escambia County has just about exhausted all of their immediate options in trying to cope with the flood tide of local problems. The reason is simple – we have run out of tax dollars. There is little or no potentially new revenue available to us in the foreseeable future; therefore, the need to stabilize cost and improve productivity in local

government is an issue of concern to all citizens. Perhaps one of the first places to start is the identification of priorities in clear, precise terms so that the citizens may understand their need to respond, and so that we may allocate our inadequate resources better.

Revitalization of County Government

Our changing society requires counties to provide new and improved services and perform new functions; therefore, we must find some way to revitalize local self-government, and we must also find some method to allow County government more flexibility of form, function, and finance. Modernizing County government is perhaps the most pressing need for action.

The average citizen feels no impelling need, no urgency for any major restructure of the governmental pattern. Perhaps the basic reason is their lack of awareness for the need for change and the lack of knowledge of the present structure.

There has been a substantial growth in the expenditure of monies and employees in the past few years; therefore, the public is showing a renewed interest in taxes, governmental cost, and productivity levels of state and local governments.

Regardless of the future, we need priorities so as to allocate our inadequate resources better. Perhaps most important of all, extension of the principle of home rule should lead to the revitalization of local self-government that would help roll back the increasing concentration of power in the state and federal government.

Intergovernmental Agreements

We recommend that the Board of County Commissioners utilize corporate intergovernmental agreements, where appropriate, to attain economical performance of needed services.

Personnel – Civil Service

The authority of the Civil Service Board to set salaries for classified positions should be removed and placed in a Department of Personnel with responsibility for all personnel policies.

The Civil Service Board should have the authority to adopt, amend, and enforce a code of regulations providing for examination, appointment, employment, promotion, standards, of conduct, and efficiency of employees in the classified service, and they should be the sole authority vested with the power to approve, confirm or deny disciplinary action against an employee within the classified service.

Charter Government

Charter provisions should maintain all constitutional elective County officers so as to insure accessibility and effectively pinpoint accountability to the voter.

A Charter is nothing more and nothing less than a constitution or contract between the people and their government. A charter delineates the duties and responsibilities of government, and it delineates the rights and privileges of the people. We therefore recommend that the people be given an opportunity to vote on Charter government in accordance with the constitution and state statutes.

NOTES

EXHIBIT 99

Recommendations by Minority of Charter Commission Appointed in 1975

Mr. Kenneth Kelson, Chairman
Mr. Zearl Lancaster, Vice Chairman
Mr. Jack Kenney
Mr. Marvin G. Beck
Mr. Charles Deese, Jr.
County Courthouse
Pensacola, Florida 32501

Gentlemen:

We the undersigned, have studied carefully all of the material presented to us during the past year and a half, including a very careful study and restudy of the proposed charter. We have raised objections from time to time to various sections and, while some of the most inappropriate parts of the proposed charter might be changed, we believe that to submit a Charter Government to the people by referendum at this time would be a grave mistake.

In the first place, a Charter Government, as considered and discussed by us in the last year and a half, would materially increase the cost of our County Government and would tend to complicate its operation and most important of all, it would remove the checks and balances which now prevail.

The County Seal, and with it the authority which now rests with the County Comptroller, an elected official, would be passed on to the County Administrator, who would be hired by the Board of County Commissioners, who in turn could be fired by the Board of County Commissioners. This would obviously place in the hands of the Board of County Commissioners the power of Legislation, Administration and Judiciary.

Section 105 of the proposed charter provides that the

County shall have the authority to assume and perform all functions:

"The County shall have the authority to assume and perform all functions and obligations now or hereinafter performed by any muncipality, special district or agency whenever such municipality, special district or agency shall request the performance of transfer of the functions to the County".

We feel that this would be a means of obtaining consolidated Government without a referendum.

In lieu of recommending a charter to you, we respectfully recommend your careful consideration of the following changes which we believe will improve our Government and bring your offices closer to the people whom you serve.

1. Election of County Commissioners (a total of five) shall be by districts and on a non-partisan basis.

2. The Commissioners, in order to justify their cost to the tax-payers, shall remain on a full-time basis.

3 . The salaries of the Commissioners shall remain set by Legislation.

4. The question of whom shall be bonded and the amounts of bonds shall be provided by Legislation.

5. Your special consideration is respectfully recommended to the organizational chart. We believe that this chart can be improved and should be completely revamped.

6. We recommend that your Honorable Board should interview the heads of all departments of the County and the heads of all agencies, both State and Federal (whether contributed to by County funds or not), to determine where overlapping and unnecessary opera-

tion occurs. This should enable you to reduce costs and eliminate waste.

7. We understand that the Board of Trustees has a Task Force Committee which has been appointed to study the operation of the University Hospital. We are confident that this well qualified Committee will discover any economies which can be effected and that the high caliber people on the present Board of Trustees and Administration will be eager to reduce cost wherever possible without reducing necessary service.

We have tried to cover these recommendations as briefly as possible; However, we would be pleased to discuss this matter with your Honorable Board. If we have omitted anything about which you have questions, we will be happy to discuss this matter with your Honorable Board at your convenience.

Respectfully yours,

/s/ H. A. Brosnaham, Jr.

/s/ Adrian Blanton

CC: Mr. Billy Tenant
County Health Department

EXHIBIT 100

Proposal of Charter Commission Appointed in 1977

CHARTER GOVERNMENT STUDY COMMITTEE REPORT

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

ESCAMBIA COUNTY, FLORIDA 1975-1976

PROPOSED
ESCAMBIA COUNTY CHARTER

PREAMBLE

We, the people of Escambia County, Florida, join together, under God, in the belief that County government shall be responsive to the people of the County and shall serve the people in a manner of efficiency and accountability, with equal benefits for all cities; do in accordance with the Constitution and Laws of State of Florida, ordain and establish as our Charter and form of government this Charter of Escambia County, Florida.

ARTICLE I

POWERS OF GOVERNMENT

SECTION 101. BODY CORPORATE AND POLITIC.

Escambia County shall be a Body Corporate and Politic, and as such shall have all rights and powers of local self-government, which are now, or hereinafter may be, provided by the Constitution and Laws of Florida, and this Charter.

SECTION 102. NAME AND BOUNDARIES.

The corporate name of this County government shall be "Escambia County," hereinafter referred to as the "County," and shall be so designated in all actions and proceedings concerning its rights, powers, properties, and duties. Its seat shall be within Pensacola, Florida, and boundaries of the County shall be those designated by law.

SECTION 103. GENERAL POWERS OF THE COUNTY.

The County, shall have all powers and duties of local self-government not inconsistent with general law, or with special law approved by vote of the electors.

SECTION 104. SPECIAL POWERS.

The County shall have all special powers and duties which are not inconsistent with this Charter, heretofore granted by law to the Board of County Commissioners.

SECTION 105. CONSOLIDATION OF GOVERNMENTS.

Notwithstanding any provision herein, this Charter shall not be deemed to authorize or permit (1) the consolidation of the government of Escambia County and any municipality therein and the County shall not consolidate its government with any municipality therein, except pursuant to an election held under a special law specifically providing for such an election, which shall provide that no consolidation shall be effected unless (a) the qualified electors residing within any municipality concerned participate in the election and a majority of the participants vote in favor of consolidation; and (b) unless the qualified electors residing without the corporate limits of the city concerned participate in the election and unless a majority of such participants in both areas shall vote in favor of consolidation.

SECTION 106. DIVISION OF POWERS.

This Charter hereby establishes separation between the legislative, administrative, and judicial functions of this government; the establishment and adoption of policy shall be the responsibility of the Legislative Branch and the execution of that policy shall be the responsibility of the Administrative Branch.

SECTION 107. EXERCISE OF POWERS.

All powers of the County shall be executed as provided by this Charter or, if the Charter makes no provisions, as

provided by ordinance or resolution of the Board of County Commission.

SECTION 108. SECURITY OF THE CITIZENS' RIGHTS.

In order to secure to the citizens of the County protection against abuses and encroachments, the County shall use its powers to prevent by ordinance or by legal process, whenever appropriate, in securing for all citizens:

A. Just and Equitable Taxation: The County shall prevent the imposition of any tax within the County in excess of the limitation imposed by Article VII, Section 9, of the Florida Constitution, or by the Laws of Florida;

B. Proper Use of Public Property: The County shall prevent the use of public property, taxes, or taxing power for the benefit of private individuals, partnerships, or corporations in violation of the restrictions imposed by Article VII, Section 10, of the Florida Constitution, or by the Laws of Florida;

C. Full Disclosure of Public Record and Proceedings: All meetings and proceedings established by the County shall be open to the public in compliance with the Laws of Florida. All official acts, documents, and financial reports, except those which have been specifically prepared for use in court proceedings, criminal and law enforcement files, those which would invade a person's right of privacy, shall be open for public inspection, and the agency having custody and control of public records shall, upon request, supply certified copies of the records requested for a reasonable fee as established by ordinance; and

D. Protection of Human Rights: The County shall establish provisions, pursuant to state and federal law, for

protection of citizen human rights from discrimination based upon religion, political affiliation, race, color, age, sex, or national origin by providing and insuring equal rights and opportunities for all citizens of Escambia County.

SECTION 109. ORDINANCE SUPERIORITY.

Where a municipal ordinance conflicts with a County ordinance, the municipal ordinance shall prevail within the municipality to the extent of such conflict, otherwise a County ordinance shall be effective Countywide.

SECTION 110. CONSTRUCTION.

Escambia County shall have all power possible for a County to have under the Constitution and Laws of Florida. These powers shall include, but shall not be restricted to or by, the following: all powers now or hereafter given by the Constitution or other laws, and all other powers not prohibited by such Constitution or by this Charter to Escambia County or its departments, offices, or agencies, or to counties or County departments, offices or agencies; and all powers necessary and proper to carry into execution other powers of Escambia County. The County shall have all such powers as fully and completely as though they were specifically enumerated in this Charter, and no enumeration of powers in this Charter shall be deemed exclusive or restrictive.

SECTION 111. SEVERABILITY.

If any article, section, subsection, sentence, clause of provision of this Charter or the application thereof shall be held invalid for any reason, the remainder of the Charter and of any ordinances, regulations or resolutions made thereunder shall remain in full force and effect.

ARTICLE II

LEGISLATIVE BRANCH: COUNTY COMMISSION

SECTION 201. COMPOSITION.

The legislative power of the County shall be vested in the Escambia County Commission, hereinafter referred to as the "Commission." There shall be five (5) Commission districts and one (1) Commission member shall be elected from each district by voters of that district.

SECTION 202. TERMS OF OFFICE.

All County Commissioners shall be elected on a nonpartisan basis for staggered terms of four (4) years, except as provided for in this section. The Commission members elected from a district shall be elected for a term of four (4) years, and be limited to three (3) consecutive terms.

SECTION 203. CONTINUANCE OF COMMISSIONERS.

The Commission members in office on the effective date of this Charter shall continue in office as the Commissioner from the district from which he qualified until the normal expiration of their term, or until the election and qualification of their successors.

SECTION 204. APPORTIONMENT.

The Commission shall divide the County into five (5) districts of contiguous territory as nearly equal in population as practicable after each decennial census.

SECTION 205. COMPENSATION.

Commissioners' salaries shall be as established by general law. Commissioners shall not be reimbursed for

expenses other than those specifically approved by the Commission. Commissioners shall receive reimbursement for their actual and necessary expenses incurred in the performance of their official duties as provided by general law.

SECTION 206. QUALIFICATIONS.

Commissioners shall be qualified electors of the County and shall have been a resident of the County for one (1) year immediately preceding the date on which they qualify to run for office and shall have resided within the district from which they are elected for at least six (6) months prior to the date on which they qualify to run for office. Any Commissioner who changes residence from the County, and any Commissioner elected within a district who changes residence from the district from which the Commissioner was elected, shall be deemed to have vacated his office.

If a Commissioner ceases to be a qualified elector of the County or is convicted of a crime involving moral turpitude, he shall be deemed to have vacated his office. The Commission shall have power to subpoena witnesses, take testimony, and require the production of records. Decisions made by the Commission in the exercise of powers granted by this section shall be subject to review by the courts.

SECTION 207. VACANCIES.

A vacancy in any Commissioner's office or other elected County official shall be filled in accordance with general law.

SECTION 208. SUSPENSIONS.

Suspensions from office of any County elected official shall be for cause and shall be in accordance with the Constitution and Laws of Florida.

SECTION 209. POWERS AND DUTIES OF THE COMMISSION.

The Commission shall be the legislative and policy-determining body of the County. Except as otherwise provided by the Constitution of the State of Florida, or by this Charter, the Commission shall have all powers of the County. Without limitation to the foregoing grant and without limitation to the other powers given it by this Charter, the Commission shall have the power to:

(1) Appoint by a majority vote of the full Commission and to remove by a majority vote of the full Commission the County Manager; members of appointed County boards, commissions and advisory groups, except as otherwise provided for in this Charter;

(2) Elect from among its members a Chairperson and a Chairperson Pro Tem. The Chairperson shall preside at Commission meetings. If at any meeting the Chairperson is not present or is unable to act, the Chairperson Pro Tem shall preside. The Chairperson and the Chairperson Pro Tem shall be elected annually prior to December 1, and shall take office on the first Thursday of January of each year;

(3) Advise and consent to all appointments by the County Manager for which Commission confirmation is specified under this Charter;

(4) Adopt or enact, in accordance with the procedures provided by general law, ordinances and resolu-

tions it deems necessary and proper for the good governance of the County;

(5) Appoint a clerk to the Commission who shall serve at its pleasure and keep the records and minutes of the Commission;

(6) Adopt and amend the Administrative Code to govern the operation of the County;

(7) Provide for an independent audit of County finances;

(8) Fix and amend Commission districts so as to be nearly equal in population as practicable;

(9) Levy taxes and special assessments and to borrow money subject to the limitations as provided by the Constitution and Laws of Florida;

(10) Review budgetary requests, and make the final determination and approve appropriations for all operations of County government, except as provided by law;

(11) Enter into bilateral and multilateral contracts with the State, other Counties and with governmental units within or contiguous to the boundaries of the County for joint performance, or for performance by one governmental unit in behalf of the other or others of any function or activities which the County is authorized to perform;

(12) Make the investigations of the affairs of the County and to make inquiries into the conduct of any County employee, department, office, or agency;

(13) Make appropriations for County purposes;

(14) Adopt rules and procedures as shall be necessary for the orderly transactions of the business of the Commission;

(15) It shall be the duty of the Commission to directly accept or reject all loans and grants of the State and federal government, or modifications thereto.

(16) Designate which department heads and employees shall be bonded and fix the amount and form of such bonds; and

(17) Require periodic and special reports concerning functions of any County department, office, or agency receiving County funds. Such reports, in the case of departments, offices, or agencies, subject to the direction and supervision of the County Manager, shall be submitted through the County Manager.

SECTION 210. POWERS AND DUTIES OF THE CHAIRPERSON OF THE COMMISSION.

The Chairperson shall serve as the chief officer of the legislative branch of the County government and shall devote such time as is necessary to perform the duties of the office. The Chairperson, in addition to the powers and duties provided elsewhere in this Charter, shall have the specific powers and duties to:

(1) Serve as the legislative leader and presiding officer of the Commission;

(2) Present annually in January of each year a "State of the County" message, setting forth programs and recommendations to the Commission;

(3) Nominate, subject to the confirmation by a majority vote of all members of the Commission, members of all appointed County boards, commissions, and advisory groups;

(4) Call all regular and special meetings of the Commission;

(5) Promote the welfare and best interest of the citizens of Escambia County by presenting from time to time policy recommendations to the Commission; and

(6) Serve as the official representative and ceremonial dignitary for the government of Escambia County.

SECTION 211. PROCEDURE: MEETINGS; RULES AND JOURNAL; VOTING.

A. The Commission shall meet regularly, at least twice in every month, at such times and places as the Commission may prescribe by rule. Special meetings may be held on the call of the Chairperson, or in his absence, the Chairperson Pro Tem, or of two (2) or more members and, whenever practicable, upon no less than twelve (12) hours effective notice to each member. All meetings of the Commission shall be public, as required by general law; and

B. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. A majority of the members of the Commission shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Commission.

SECTION 212. COUNTY ORDINANCES AND RESOLUTIONS.

Every County ordinance and resolution shall be introduced and approved in accordance with the Constitution and Laws of Florida.

SECTION 213. RECORDING, PRINTING AND CODIFICATION

The Commission shall provide for the authentication and recording in full, in a properly indexed book kept for the purpose, of all minutes of meetings, ordinances and resolutions adopted by the Commission and the same shall, at all times, be a public record. The Commission, with the advice and assistance of the Director of Law, shall cause each ordinance and resolution have the force and effect of law and each amendment to this Charter to be printed as promptly as possible following its adoption; and the printed ordinance, resolutions and Charter amendments shall be sold to the public at prices consistent with general law. The Commission shall further maintain a codification of all ordinances. Such codification shall be published and made available for distribution on a continuing basis at prices consistent with general law.

SECTION 214. RESTRICTIONS ON ELECTED OFFICIALS AND COMMISSION.

Neither the Commission nor any of its members shall in any manner direct the appointment or removal of any County employee. Except for the purpose of inquiries under Section 209 of this Article, the Commission or members, in dealing with County employees who are subject to the direction and supervision of the County Manager, shall deal solely through the County Manager, and neither the Commission nor its members shall give orders to any such employee, either publicly or private. No person elected or member of the Commission shall be appointed to any paid County administrative office or paid County position during the period beginning on the date of his election and ending not less than one (1) year after the expiration of term for which he was elected.

ARTICLE III

ADMINISTRATIVE BRANCH: COUNTY MANAGER

SECTION 301. COUNTY MANAGER.

There shall be a County Manager, hereinafter referred to as the "County Manager," who shall be appointed by a majority vote of all members of the Commission, for an indefinite term. The County Manager shall serve at the pleasure of the Commission, and he may be removed at any time by a majority vote of all of its members. At least thirty (30) days before such removal is to become effective, the Commission shall furnish the County Manager with a written statement setting forth its intention to remove him. In the event such a removal for any reason other than a conviction of a felony or malfeasance in office, he shall be granted two (2) months' termination pay.

SECTION 302. QUALIFICATIONS.

The County Manager shall be chosen solely on the basis of his executive and administrative abilities, with special reference to the duties of his office, as herein outlined. The County Manager need not be a resident of Escambia County or of the State of Florida at the time of his appointment, but during the tenure of his office, he shall, within sixty (60) days, establish residence within Escambia County.

SECTION 303. VACANCY.

When a vacancy occurs in the office of the County Manager, the Commission may designate one (1) qualified staff member to perform the duties of the County Manager for a period not to exceed sixty (60) days.

SECTION 304. BOND: COUNTY MANAGER.

Before entering upon his duties, the County Manager shall give a bond to the Commission with a bonding company as surety, conditioned upon the faithful performance of his duties, to be approved by the Commission. The premium for said bond shall be paid by the County.

SECTION 305. SALARY: COUNTY MANAGER.

The salary of the County Manager shall be fixed annually by contract.

SECTION 306. POWERS AND DUTIES OF COUNTY MANAGER.

The County Manager shall be chief administrative officer of the County, and he shall be responsible to the Commission as a whole for the proper administration of the affairs of the County, except as otherwise provided by the Constitution and the Laws of Florida, or by this Charter.

The powers and duties of the County Manager shall include the following:

(1) Administer and carry out the directives and policies of the Board of County Commissioners and enforce all orders, resolutions, ordinances and regulations of the Board, the County Charter, and all applicable general law, to assure that they are faithfully executed;

(2) Supervise the care and custody of all County property, institutions and agencies;

(3) He shall employ, and when necessary for the good of the County, shall suspend, discipline or discharge, in accordance wit the Civil Service System, any employee under his supervision, provided that the County Manager

shall report, at the next meeting hereafter of the Commission, any action taken by authority of this subsection;

(4) He shall submit annually to the Commission, a budget for the next fiscal year. The County Manager shall be responsible for the administration of the budget after its adoption by the Commission;

(5) He shall, in conjunction with the preparation of the annual budget, develop long-range fiscal plans for the County, such plans to be presented, as necessary, to the Commission for its review and adoption;

(6) Negotiate contracts, bonds or other instruments for the County, subject to Board approval; make recommendations concerning the nature and location of County improvements; and executive services determined by the Board;

(7) He shall hold such other County offices and head such other County departments as the Commission may from time to time direct;

(8) He shall attend all meetings of the Commission, with a right to take part in the discussions;

(9) He shall prepare the agenda for each regular or special meeting and committee meetings of the Commission and shall supply facts pertinent thereto;

(10) He shall review, analyze and forecast trends of County services, finances and programs of all County departments and agencies receiving County funds; keep the Commission informed as to the conduct of County affairs and submit such other reports as the Commission requests;

(11) Assure that all terms and conditions imposed in favor of the County or its inhabitants in any statute, franchise, or other contract are faithfully kept and performed;

(12) He shall coordinate all funding programs of all other governmental units or agencies with the County government; and

(13) The County Manager shall submit to the Commission at the end of the fiscal year a complete report on the finances and administrative activities of the County for the preceding year and prepare and make available for distribution to the public, within three (3) months after the end of the fiscal year, an annual report on County affairs during that fiscal year.

SECTION 307. ADMINISTRATIVE CODE: INITIAL.

The County Manager shall prepare an initial Administrative Code which shall set forth departmental organization of County government and the nature and scope of each department, together with all required rules and procedures for the operation of said departments, and a comprehensive budget procedure. Such Administrative Code shall, within nine (9) months after adoption of this Charter, be submitted to the Commission for review, amendment and adoption. The Commission shall adopt the Administrative Code as submitted or amended within three (3) months of the date submitted. If not adopted within three (3) months, the Administrative Code, as originally prepared by the County Manager, shall be considered approved and shall remain in force until such time as it may be formally amended by the Commission. The County Manager may, from time to time, submit any changes in any or all department organizations, including combinations, deletions and creations of departments or divisions, and transfer of responsibilities between departments or divisions to the Commission for review, amendment or adoption.

SECTION 308. TEMPORARY ABSENCE.

Should the County Manager become ill or need to be absent from the County, he may designate one (1) qualified member of his staff to temporarily perform the duties of the County Manager during his absence or disability. However, the person so designated shall not perform those duties for a period longer than fifteen (15) calendar days without the approval of the Commission.

ARTICLE IV

ADMINISTRATIVE BRANCH: ADMINISTRATIVE ORGANIZATION.

SECTION 401. GENERAL PROVISIONS.

A. Except as provided by this Charter, the activities under the direction and supervision of the County Manager shall be distributed among such departments, offices and agencies as are established by this Charter, or may be established, merged or abolished thereunder by the Administrative Code.

B. Except as provided by this Charter, each department shall be administered by an individual appointed by and subject under this Charter to the direction and supervision of the County Manager. With the consent of the Commission, the County Manager may serve as the head of one or more such departments, and with Commission approval, may appoint one person as head of two or more such departments.

C. The department heads shall be appointed with the advice and consent of the Commission and shall serve at the pleasure of the County Manager, except as otherwise provided for in this Charter.

D. The department heads shall be chosen solely on the

basis of their qualifications, executive and administrative abilities, with special reference to the duties of the office. Department heads and County employees shall not be employed or receive compensation from more than one appointing authority.

SECTION 402. DEPARTMENTAL STRUCTURE.

The departmental organization of County government and the nature and scope of each department, together with all the required rules and procedures for the operation of said department, shall be set forth in the Administrative Code. The Administrative Code shall be adopted by and may be amended by the Commission. The County Manager shall, from time to time make recommendations as to the promulgation, adoption and amendment of the Administrative Code.

SECTION 403. INITIAL DEPARTMENTS AND OFFICES.

The following initial departments and offices are hereby established under this Charter until amended or abolished under the Administrative Code:

(1) Department of Finance.

(2) Department of Personnel.

(3) Department of Public Works.

(4) Department of Public Safety.

(5) Deparmtnet of Community Services.

(6) Department of General Services.

SECTION 404. DEPARTMENT OF FINANCE.

There shall be a Department of Finance headed by a Director of Finance. The Director of Finance shall, sub-

ject to the direction of the County Manager, be responsible for the preliminary preparation of the County budget as provided by the Laws of Florida, and shall be responsible for the Administration of such duties as may be assigned under the Administrative Code and this Charter. The following duties are hereby specifically imposed under the Director of Finance:

(1) Maintaining the budget records of the Commission and County departments established under this Charter.

(2) Maintaining inventories and records of County property and equipment as required by laws.

(3) Supervision of central purchasing for the County.

(4) Devise a records system for maintaining inventories of fuels, equipment, supplies and the distribution thereof.

SECTION 405. DEPARTMENT OF PERSONNEL.

There shall be a Department of Personnel, headed by a Director of Personnel. The Director of Personnel shall be responsible for preparing and recommending County personnel policy for all County departments, officers and agencies, including classification of positions, pay and benefit plans, and the maintenance of a roster of all employees, their classification and pay scale.

SECTION 406. ESTABLISHMENT OF A CIVIL SERVICE SYSTEM.

There is hereby created a Civil Service System for all classified employees of Escambia County to which system all employees of the County who are now members of any or the present existing Civil Service System of the County, established under the Laws of Florida, shall be and are hereby declared to be automatically members of the Civil

Service System of the County upon the effective date of this Charter.

SECTION 407. CIVIL SERVICE BOARD.

A. There is hereby created a Civil Service Board which shall consist of five (5) members; one (1) shall be elected by the legislative body of the County, being the Commission of the County, and one (1) shall be elected by the School Board; one (1) shall be elected by the elected constitutional County officers, and one (1) shall be elected by the employees of the County who are members of the classified service. The fifth member shall be named by the other four members. In the event said members cannot agree upon the fifth member within fifteen (15) days after said members take office, the chief judge of the Circuit Court shall designate such member; the Board shall elect one of their members to be Chairperson, and one member to be Vice-Chairperson. Members shall receive no salary but shall be reimbursed for expenses incurred in the discharge of their official duties in accordance with Chapter 112.061, Florida Statutes.

B. The Civil Service Board of Escambia County is authorized to employ a competent secretary, legal counsel, and other additional help to carry out their duties under this Charter.

C. The initial appointments to the Civil Service Board by the County employees, School Board and Constitutional Officers shall be for a period of four (4) years; initial appointments by the Commission and the member elected by the other four members shall be for a period of two (2) years. Thereafter, the members of the Civil Service Board shall be selected for staggered terms of four (4) years.

D. Each appointing authority shall be authorized, empowered, and required to elect an alternate to the Civil Service Board who shall serve in the event the member so elected shall not be able to serve.

SECTION 408. QUALIFICATIONS AND ELECTIONS: CIVIL SERVICE BOARD.

A. Any qualified voter residing in Escambia County is eligible to be a member of the Civil Service Board, provided, however, that no person convicted of a crime involving moral turpitude, or who is an officer or employee of the County shall be eligible to hold office as a member of the Civil Service Board.

B. Any member of the Civil Service Board may be disqualified to hear and determine any cause if there exists any ground which under the Laws of the State of Florida would disqualify the judge of any court or which is ground of challenge for cause to any juror.

C. The first election of the Civil Service Board members under this Charter shall be held not more than ninety (90) days after the effective date of this Charter. The Civil Service Board elected herein provided shall take office within ten (10) days after election or appointment. The oath of office shall be administered to each of the Civil Service Board members by the Chairperson of the Commission.

SECTION 409. MEETINGS OF THE CIVIL SERVICE BOARD.

The Civil Service Board shall hold not less than one (1) regular meeting each month, and may hold special meetings when required for the transaction of business by the Board. Such meetings may be called by any two members

of the Board of Secretary to the Board. Three (3) members shall constitute a quorum.

SECTION 410. CLASSIFIED AND UNCLASSIFIED SERVICES.

A. County personnel is hereby divided into "classified service" and "unclassified service" as provided by the Escambia County Civil Service Act of 1977.

B. All heads of departments created under Section 403 of this Charter or subsequently created by the Administrative Code shall be within the unclassified services.

C. The Civil Service Board shall adopt, amend and enforce a code of rules and regulations providing for examination, appointment, employment, promotion, standards of conduct and efficiency of employees in the classified service.

D. The Civil Service Board shall be the sole authority vested with the power to approve and confirm or deny disciplinary action against any employee within the classified service.

SECTION 411. TRANSFER OF POWER.

Upon the effective date of this Charter, the Civil Service Board of Escambia county, as created by the Escambia County Civil Service Act of 1977, shall cease to exist.

SECTION 412. EXISTING CIVIL SERVICE BOARD MEMBERS.

The members of the Escambia County Civil Service Board created by the Escambia County Civil Service Act of 1977 and existing on the effective date of this act shall serve as temporary members of the Civil Service Board as

created under Section 407 of this Charter until the regular members of said board are selected and qualified as provided herein. Except where inconsistent with this Charter the provisions of the Escambia County Civil Service Act of 1977, and rules dopted thereunder, shall remain in full force and effect.

SECTION 413. INDEPENDENT NATURE OF BOARD.

The Civil Service Board shall be independent of all members of administrative service of the County and shall conduct all hearings, trials, and proceedings of every character in an impartial, just manner, designed to promote justice and efficiency.

SECTION 414. APPOINTMENT: DIRECTOR OF PERSONNEL.

The Director of the Department of Personnel shall be appointed by the County Manager with the advice and consent of a majority of the Commission.

SECTION 415. ANNUAL REPORT.

The County Manager shall report annually in written form to the Commission concerning the administrative needs of the Service, the personnel and positions in the County, and the compensation provided therefor, the examinations held by the Board, the appointments made, service ratings and removals in the Civil Service, the operation of the rules of the Civil Service Board, and recommendations for promoting efficiency and economy in the Service, with details of expenditure and progress of work.

SECTION 416. DIRECTOR OF LAW: QUALIFICATIONS AND DUTIES.

The Director of Law shall be an attorney at law who shall have practiced in the State of Florida for at least two (2) years or who has had an equivalent combination of education and experience concentrated in municipal or county government law. He shall be appointed by and serve at the pleasure of the Commission. The Director of Law shall be the chief legal advisor of and attorney for the Commission and all departments and offices thereof in matters relating to their official powers and duties, except as otherwise provided by this Charter. It shall be his duty, either personally or by such assistants as he may designate, to perform all services incident to the Department of Law; to attend all meetings of the Commission; to give advice in writing, when so requested, to the Commission, the County Manager, or the director of any department; to prosecute or defend, as the case may be, all cases to which the County may be a party; to prepare or review all contracts, bonds and other instruments in writing in which the County is concerned, and to endorse on each his approval of the form and the correctness thereof; and to perform such other duties of a legal nature as the Commission may by ordinance or resolution require. In addition to the duties imposed upon the Director of Law by this Charter or required of him by ordinance or resolution of the Commission, he shall perform any duties imposed upon the chief legal officers of counties by law.

ARTICLE V

ELECTED COUNTY OFFICERS CONTINUED

SECTION 501. COMPTROLLER.

The Comptroller shall perform all duties of the office of Comptroller, as provided by law, except to the extent in-

consistent with this Charter. The Comptroller shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

SECTION 502. PROPERTY APPRAISER.

The office of Property Appraiser shall continue, and all laws applicable thereto shall continue at full force and effect. The Property Appraiser shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

SECTION 503. SHERIFF.

The constitutional office of Sheriff shall continue, and all laws applicable thereto shall continue at full force and effect. The Sheriff shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

SECTION 504. SUPERVISOR OF ELECTIONS.

The constitutional office of Supervisor of Elections shall continue, and all laws applicable thereto shall continue at full force and effect. The Supervisor of Elections shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

SECTION 505. TAX COLLECTOR.

The constitutional office of Tax Collector shall continue, and all laws applicable thereto shall continue at full force and effect. The Tax Collector shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

ARTICLE VI

JUDICIAL SYSTEM

SECTION 601. JUDICIAL SYSTEM

The judicial system of the Charter government shall be as provided by the Constitution and Laws of Florida.

SECTION 602. JUDICIAL OFFICES.

The office of the Clerk of Circuit Court, judges of the County Court, and all other offices of the various courts of the County shall continue, and all laws applicable thereto shall continue at full force and effect. The Clerk of Circuit Court shall qualify, be nominated, elected and serve as is provided by the Constitution and Laws of Florida.

ARTICLE VII

FINANCIAL PROCEDURES

SECTION 701. FISCAL YEAR.

The fiscal year of the Charter government shall be in accordance with general law.

SECTION 702. UNIFORM BUDGETARY SYSTEM.

All County operations shall utilize a unified and uniform budget system as provided by the State Comptroller. All fees collected by officers and employees of the County shall be deposited in the appropriate County fund as provided by law. The head of each County department, elected County official, office or agency receiving County monies, shall furnish the County Manager a detailed budget as may be required for the ensuing year's opera-

tion, a capital program, and such additional information as may be required by the County Manager or the Commission prior to June 1 of each year. On or before the first day of July of each year, the Director of the Department of Finance shall determine the estimated revenues of the County and, under the supervision of the County Manager, shall prepare a tentative budget with the comparative analysis from past years.

SECTION 703. BUDGET REVIEW.

Prior to August 15 of each year, the County Commission shall review the tentative budget and capital program as submitted by the County Manager, together with the County Manager's recommendations and the original budget request of any elected County official, and shall make such additions, deletions or changes as may be necessary to insure the proper funding of operations of County government. The County Commission shall take action to insure that the total budget provides sufficient funds on an annual basis for all agencies and departments to carry out their duties and functions, as provided by this Charter, the Constitution, and the Laws of Florida.

SECTION 704. PUBLIC HEARING.

Prior to September 15 of each year, a public hearing shall be held on the County budget and capital program. After the public hearing, the Commission may adopt the budget and capital program with or without amendment. A notice of such public hearing and a summary of the budget of each elected official, department and agency shall be published in a newspaper of general circulation in the County at least ten (10) days before the date of such hearing. Final adoption of the budget by the Commission shall be made prior to October 1 of each year.

SECTION 705. FINANCIAL DISCLOSURE.

Any agency or elected County officer receiving County appropriated funds shall make a complete and full disclosure of all financial operations annually, including all sources of funds, disbursements, and budget of the agency or County officer, on forms prescribed by the County Comptroller. Such financial records shall be filed with the Commission and copies of such records shall be available to any members of the public at a public location or locations designated by the Commission, or at a reasonable cost.

SECTION 706. REQUIRED AUDIT.

The County Comptroller shall, within six (6) months of the end of the fiscal year, complete an audit of the accounts and other evidence of financial transactions of the County and of every County department and office.

ARTICLE VIII

ELECTIONS

SECTION 801. ELECTION PROCEDURES.

All elections shall be held and conducted pursuant to the provisions of Article VI of the Constitution and Laws of Florida, except as otherwise provided in this Charter.

SECTION 802. CANVASSING BOARD.

There shall be a Canvassing Board as prescribed and designated by the Commission.

ARTICLE IX

MISCELLANEOUS PROVISIONS

SECTION 901. LAWS CONTINUED.

All laws, ordinances, regulations and resolutions of the County shall remain operative except where inconsistent with this Charter.

SECTION 902. ADMINISTRATIVE CODE.

Any Administrative Code adopted and amended shall not be inconsistent with the provisions of this Charter.

SECTION 903. RIGHTS RESERVED.

All actions, rights of action, claims, contracts and obligations of persons, corporations, public bodies or agencies existing on the date this Charter becomes effective shall continue to be valid as if this Charter had not been adopted.

SECTION 904. PUBLIC DEBT AND BOND OBLIGATIONS CONTINUED AND RECOGNIZED.

All public debts, bonds, revenue certificates, revenue bonds and tax anticipation certificates heretofore incurred or issued by Escambia County shall remain valid and in full force and effect and shall be secured by the same sources of revenue as before the adoption of this Charter and to the extent necessary all ordinances, resolutions or other actions pertaining to same shall remain in full force and effect until payment in full of such public debts and securities.

SECTION 905. PROCEEDINGS CONTINUED.

All petitions, hearings and other proceedings pending before the former government shall remain in full force and effect as established under this Charter.

SECTION 906. CITIZENS' ADVISORY BOARDS.

All advisory boards existing at the date of the adoption of this Charter are hereby abolished. The Commission may create by resolution, specifying the duties and membership thereof, such advsiory boards as it deems necessary. Members of such advisory boards shall be nominated by the Chairperson of the Commission, subject to confirmation by a majority vote of the full Commission.

SECTION 907. BOARD OF TAX ADJUSTMENT.

The Board of Tax Adjustment, as provided by the Laws of Florida, shall continue under this Charter.

SECTION 908. PETITION AND ORDINANCE.

The Commission may, by ordinance, or the electors of the County may, by petition signed by ten percent (10%) of the registered voters, submit to the electors of the County a proposed amendment to this Charter, which amendment may be to any part or to all of said Charter. When such change is filed with the Supervisor of Elections, it shall be submitted to the voters at an election to be held in accordance with the requirements of the Constitution and Laws of Florida, and if approved at the election, the change shall become a part of this Charter.

SECTION 909. RECALL OF COMMISSIONERS.

Any member of the Commission may be recalled and

removed from office in accordance with procedures established by general law.

SECTION 910. NOTICE OF CHARTER AMENDMENT REFERENDUM.

In addition to any other notice requirements provided by the Charter or general law, whenever a Charter amendment is submitted to referendum, the exact language of the proposed Charter amendment or amendments shall be published at least twice in a newspaper of general circulation in the County. One notice shall be published not more than forty-five (45) days nor less than thirty (30) days prior to the referendum election, and another notice shall be published not more than ten (10) days nor less than five (5) days prior to the referendum election.

SECTION 911. CODE OF ETHICS.

The Code of Ethics shall be the Standards of Conduct for Public Officers and Employees as provided by general law, and shall have full effect on all employees and office holders under the Charter government. Penalty for violation shall be provided by ordinance or as otherwise provided by general law.

SECTION 912. PROHIBITIONS.

No person shall be appointed to or removed from or in any way favored or discriminated against with respect to any County position or appointive County administrative office because of sex, race, creed, color, political or religious affiliations, provided however that nothing herein shall prohibit the reasonable regulation of political activity of County employees by ordinance.

ARTICLE X

TRANSITION PROVISIONS

SECTION 1001. REFERENDUM AND BALLOT.

The election of this Charter shall be held in accordance with the requirements of the Constitution and Laws of Florida. The question on the ballot shall be as follows:

"SHALL THERE BE A HOME RULE CHARTER FOR ESCAMBIA COUNTY, FLORIDA, PROVIDING FOR THE RESTRUCTURING OF COUNTY GOVERNMENT, WHICH SHALL TAKE EFFECT_____, AS PROPOSED BY CHARTER DATED_____."

FOR CHARTER:

_____

AGAINST CHARTER:

_____

SECTION 1002. FORM OF NOTICE.

The form of notice of the election by which this Charter shall be submitted to referendum shall contain the complete text for this Charter.

SECTION 1003. EFFECTIVE DATE.

This Charter shall become law when approved by a majority of those electors voting on the matter in an election to be held in the County under the provisions of the Constitution and the Laws of Florida. The Charter government shall assume all powers and duties provided by this Charter on the first day of _____, the effective date of this Charter.

SECTION 1004. INITIAL CHARTER COUNTY MANAGER.

It shall be the obligation of the Commission to employ the initial County Manager within three (3) months of the effective date of this Charter. Pending the selection of the County Manager, the Chairperson of the Commission shall be empowered to appoint an interim County Manager with powers as may be established by the Commission.

SECTION 1005. DISTRICTS.

The Commission districts existing on the effective date of this Charter shall constitute the Commission districts under this Charter.

SECTION 1006. DEPARTMENTS CONTINUED.

Except as provided by this Charter, all County departments and agencies shall continue until reorganized in accordance wih the provisions of this Charter and the Administrative Code.

SECTION 1007. EMPLOYEES' CONTINUATION.

All employees of the former County government shall, on the effective date of this Charter, become employees of the Charter government without loss of benefits. Salaries of all employees shall be continued at no less than the same level as on the date of the referendum approving this Charter, unless at such time as the Commission shall provide for overall adjustments for all County employees.

DISTRICT COURT ORDER DENYING STAY OF DECEMBER 3, 1979 REMEDIAL ORDER

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION

HENRY T. McMILLAN, et al.,
Plaintifs,

vs. PCA 77-0432

ESCAMBIA COUNTY, FLORIDA, et al.,
Defendants

ORDER

Before the court is defendants' motion for an order staying this court's order of December 3, 1979 providing for single member districts in the upcoming 1980 elections.

In argument before this court movants urged the elections be stayed completely pending further order of this court – in other words, urged that no elections at all be held in 1980, at least as scheduled.

This court would, in no event, grant that request. It would not do so for the same reasons that it denied a request to stay all elections in its order of July 11, 1978. This court may not and should not interfere with existing election processes and procedures except to the extent required to remedy unconstitutional and illegal dilution found to exist.

There remains the question whether this court should stay the effect of its December, 1979 order so that the 1980 elections may go forward under the at large system.

In *Pitcher v. Laird,* 415 F.2d 743 (5th Cir. 1969) there was developed a four part test to determine whether a stay is proper with the burden being on the movant or petitioner to show that all four conditions have been met:

> (1) A likelihood that the petitioner will prevail on the merits of the appeal;
> (2) Irreparable injury to the petitioner unless the stay is granted;
> (3) No substantial harm to other interested persons; and (4) No harm to the public interest.

On the record here, defendants may be faulted, at least to some extent, for not proceeding with diligence. They did not ask for expedited appeal of the July, 1978 decision of this court until November, 1979 – 16 months later. That decision had been certified under the statute by this court so that immediate appeal from it could be taken. In that same order this court pointed out that, while the election plan adopted or approved by it under the order would not be effective for the 1978 elections, it would be effective for the 1980 elections.

These defendants waited to seek expedited, appeal notwithstanding this court denied the motion of these and other defendants to stay all elections pending appeal by order of July 11, 1978.

There has been more delay in getting to final adoption and approvement of an election plan with the country than there was with the city. The delay resulted, in large part, because of consideration by the county of the question whether it would go forward with the adoption of a proposed charter plan. The parties and the court all agreed that since adoption of such a plan might be a factor in decision of election plan to be finally adopted or approved by the court there should be delay by this court in going

forward with such a plan. When such charter provision was rejected by the electorate of this county in November, 1979, all parties in this court were able to go forward and the result is that adoption of a plan was made in December of 1979.

To that extent defendants should not be faulted with delay. Nonetheless, it still remains that they could long earlier have sought expedited appeal of the July, 1978 decision instead of waiting until November, 1979 to do so.

Without regard to that, however, and notwithstanding, it still appears there may be time for appellate decision to be reached in order to avoid election uncertainties for the 1980 elections. As this court understands it, the Court of Appeals for the Fifth Circuit has set oral argument on the appeal on March 26, 1980. In addition to that, the Mobile cases referred to by the parties in memoranda were reargued in the Supreme Court of the United States on October 29, 1979. It seems likely that court will rule on those appeals were pending without waiting for Supreme Court decision upon them. So there is also at least the possibility that in no event will Court of Appeals for the Fifth Circuit delay its own decision in this case waiting on the decision of the Supreme Court of the United States in those cases.

In defendants' application for expedited consideration of the merits of this appeal, the defendants pointed out the qualifying date for candidates in the 1980 elections is July, 1980, and asked the appellate court to dispose of the appeal after argument, if at all possible, by July 1, 19[illegible] Thus, it is aware of the election target dates and has granted the motion to expedite the appeal.

On the record here, it is not shown that appellate decision would not be forthcoming in time to avoid any uncer-

tainties in the scheduled 1980 elections. For that reason this court concludes that defendants have not carried the burden of showing that irreparable harm and injury will result if this motion is not granted.

Of course, Court of Appeals for the Fifth Circuit is in much better position to determine the likelihood of appellate decision in time to avoid interference with the 1980 elections than is this court. While this court considers the motion to stay should be denied by it the denial is, of course, without any prejudice to the right of these defendants to seek stay in the appellate court.

In reaching this decision this court has not overlooked the fact that in the companion case of *Jenkins v. City of Pensacola,* by order of February 21, 1979, it stayed implementation of its July 10, 1978, and December 28, 1978 orders, thereby allowing the May 9, 1979 elections to proceed under the at large system. In that case there was, to this court, no likelihood for appellate decision in time to permit the elections to proceed in accordance with the decision. In the instant case there is that likelihood.

In memorandum, and in oral argument before the court, defendants contend that certainty for the 1980 election period is needed now. They point out that a signature process under which candidates may be exempted from the qualifying fee, upon submission of petitions containing signatures of 3% of the voters, is under way with at least some candidates evidencing interest in such procedure. They also point out that a number of candidates for county commission have announced their candidacy and commenced the qualifying process under the Florida statute but are uncertain as to the area in which they must campaign or how they will be elected.

To this court such contention is not sufficient to establish irreparable harm and injury unless the stay is granted. To the contrary, depending on what results on appeal, the granting of such stay order might inject even more uncertainty than now exists.

Nor does the contention establish before this court that such uncertainty does present, in fact, serious election problems to any candidates. Surely those candidates who are now making announcements, or proceeding with electoral process, if they are serious candidates for county commission, have made themselves aware of the status of the pending litigation and have not let it deter them from going forward. This contention, at least to this court, is not sufficient to show irreparable injury.

Defendants contend before this court as a ground for granting the motion that the "purpose and effect of an electoral change to single member districts will be to vote the incumbent county commissioners out of office." That change may have the effect of voting some county commission incumbents out of office but it was not its purpose. Its purpose, as pointed out, was, in view of the findings of unconstitutional vote dilution, to set up single member districts pursuant to the requirements of appellate decisions with one of them affording at least a reasonable opportunity for the election of a black commissioner.

Beyond that, a contention that this court by order should seek to influence the election, or re-election, or the failure in election, of any particular person seeking to be elected to an office should be and is rejected by this court. No person has a vested right to be elected or re-elected to office. No order of this court should be premised in whole or in part on consideration whether it would tend to help or hinder a particular person seeking election to an office.

Before this court plaintiffs contend the situation in law is different than it was in the *City of Pensacola* case at the time this court entered its order of stay and that under intervening decisions there is even less likelihood that this court may be reversed on appeal.

Because the conclusion reached is that defendants here have not carried the burden of showing irreparable harm and injury, this court finds it unnecessary to make determination respecting this factor and the other two factors set forth in *Pitcher, supra.*

It is ORDERED that defendants' motion for stay by this court should be and the same is hereby denied.

DONE AND ORDERED this 15 day of February, 1980.

/s/ Winston E. Arnow, Chief Judge

EXCERPTS OF TRIAL TESTIMONY* OF DR. GLENN DAVID CURRY

[251] Dr. Glenn David Curry. His address is in Mobile, Alabama. He was born in 1948 in West Virginia. He served in the United States Army as a captain in Viet Nam. His education includes bachelor of science in sociology from the University of Southern Mississippi, master's of sociology at the University of Mississippi, a P.h.D. in sociology from the University of Chicago. He has extensive research experience with some of the top sociologists in the country, including Dr. James S. Coleman. His teaching experience includes his present position, which is assistant professor of sociology in the Department of Sociology and Anthropology at the University of South Alabama in Mobile. Dr. Curry is a member of a number of professional associations, including the American Sociological Association, Southern Sociological Society, and the Midsouth Sociological Association. Among his research papers published include, "A Study on Viet Nam Amnesty: The Social Demography of a Political Issue," and, "The utilization of Dynamic Models for the Comparative Analysis of Military Institutions," all of which involved the use of a, a number of others which involved the use of statistical analyses applied to sociological questions. Dr. Curry is trained in computer programming, both FORTRAN and basic languages, and he has considerable experience with [252] a computer package, as it's called, the statistical package for the social sciences or SPSS, as it is known. He is presently in the process of publishing a book which will come out from the University of Notre Dame Press in the fall of this year on the subject of *Statistical Analysis of the Ford Clemency Board Data on Draft Offenders*. Your Honor, we seek to qualify Dr.

*These excerpts inadvertently were omitted in printing. The other excerpts of Dr. Curry's testimony may be found in Volume I to this Joint Appendix at page 229.

Curry as an expert witness in the field of sociological and demographic applications of statistics.

THE COURT: Does anyone wish to inquire respecting his qualifications

MR. FLEMING: No, Your Honor.

THE COURT: Let him be recognized as an expert in those fields. From time to time I see people coming in the courtroom, gentlemen. I saw one gentleman come in with a sort of briefcase. All of you are charged with looking after your witnesses, those under the rule. I call that to your attention and then I'm going to leave it up to you from now on. It may be these people are not witnesses I've seen in the courtroom but I do want all of you to know, as I reminded you, each of you is charged with the duty of seeing that your witnesses comply with the rule.

MR BLACKSHER: Yes, sir, we're aware of that.

THE COURT: I leave it up to you. Thank you. [253]

MR BLACKSHER: May it please the Court, Dr. Curry's curriculum vita is plaintiffs' exhibit 2 already in evidence.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Curry, when did counsel for the plaintiffs first contact you in connection with this litigation? A. In October, sir.

Q. Of 1977? A. Yes, sir.

Q. Have you ever testified in litigation before as a witness? A. No sir.

Q. When you were retained by us what did, specifically, did we ask you to do as a consultant? A. You asked me to see if there was a relationship between the percent of black in precincts and the percent of votes.

THE COURT: Are you able to hear the doctor over at the table here?

MR CARR: Yes, Your Honor.

THE COURT: Perhaps if you could speak a little louder, sir. A. Yes, sir. Okay, sir.

THE COURT: Go ahead.

[254] A. You asked me to find out if there was a relationship between the percentage of black voters in precincts and the percentage of votes that certain candidates got in those precincts, and I was, a little later, about a month later I was asked to see if there was relation, to come up with statistics to compare the turnout, turnouts for blacks and whites in various elections.

Q. All right, sir. What raw data were you given to perform these analyses? A. I was given voter registration data from Escambia County and the City of Pensacola and I was given voter returns by precincts for Escambia County and the City of Pensacola for the elections from 1955 through 1977 and I was given census data on the City of Pensacola for 1970.

Q. What was the purpose of having the 1970 U.S. Census data? A. The census data was used to get a measure of income per precinct so that we could control for income in our statistics.

Q. Okay, and could you explain the mechanical problem of translating the income information that's in the census data into the boundaries for precincts that are used for voting? [255] A. Yes. What was done, we had median income for the census tract, and using a map we found out which precincts were inside that census tract. Then weighting the size of the precinct we were able to calculate an estimate of the median income for each precinct.

THE COURT: I suppose you're going to clear this up for me. Median income and income cuts across the board. It is not confined to race. I suppose you're going to show me how you tie it in, but go ahead.

Q. Why don't we discuss that now, Dr. Curry? Why were we interested in having information about income in connection with the analysis? A. Yes, sir, see, if we just looked at race and its relationship to the percentage of votes we wouldn't have an idea because, for instance, black people are usually poorer than white; we wouldn't have an idea whether it was income that was causing the vote to come out this way or whether it was the percent black, but if we put regression analysis, which the technique I used allows us to look at both of that, so we can take out the effect caused by income and look at the effect caused by percentage of black.

THE COURT: I don't quite understand how you're going to do that except that the median income of blacks generally is lower than whites, but we have both blacks and [256] whites who have small incomes, median incomes and very high income. The percentage of it or amount, I don't understand how you could arrive at a percentage figure on it. All you know generally is that it is recognized that blacks as a race have a lower median income than whites. A. Yes, sir.

THE COURT: But that's all you know.

A. And also for Pensacola then I have an estimate of what the median income for that precinct is and what the percent black is and what this kind of statistics does —

THE COURT: Median income for a precinct and also have the figures for registration of blacks and whites?

A. Yes, sir.

THE COURT: That's the way you try to tie it together?

A. We use it to control. If we have the information with regression analysis we can take out the factor due to income because, as you say, there are poor whites and poor blacks voting and we want to take out the effect and sometimes it will show up, in the statistics it will show up that income in some elections, those involving two whites, very often comes out or can come out as the most important factor.

[257] THE COURT: All right, sir.

MR. BLACKSHER: We're not trying to use income to tie it to race but rather to show that it's race we're looking at and not some other demographic feature of the returns.

THE COURT: Yes, sir. Go ahead, sir.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. All right, sir. Dr. Curry, were you asked by us to use a statistical analysis to investigate whether there existed patterns of racial polarized voting in the Escambia County – Pensacola electorate? A. Yes, sir. The term "polarization" didn't come up immediately but I learned that over the process, that this was the legal term. I was just asked to show an association initially.

Q. The relationship between? A. Yes, to show whether there was a relationship between the percent blacks and percent of votes a candidate receives in a particular precinct.

Q. Would you take the time, please, to explain to the Court and for the record the statistical model that you used to perform this analysis. A. Yes, sir. If it's okay with Judge Arnow I'll try to explain it to you. I have some drawings to help.

* * * * *

[261] THE COURT: Take your 30 pecent black precinct. That means that 30 percent of the votes in the precinct were black?

A. Thirty percent of the people voting were black, yes, sir.

THE COURT: When it comes around to determining how many of those votes, those black votes that voted were Jones votes or not, how do you get to that? Because when that ballot goes in the box nobody knows the color.

A. Yes, sir. What we're doing is we're really just seeing the relationship of precincts. This technique was used in the Coleman Report in 1966 for Congress and they found that by, that grouped data very often can give a better indication of what people are doing because people in groups have, if there's a social force at work, that social force operates irrespective of our individual characteristics. For instance you and I both have little idiosyncrasies that separate us from other whites but still if we assume there's some overall behavior that whites have that's operating for all the whites in the room, operating for all the blacks in the room, while an individual white person or individual black person is going to have those idiosyncratic factors, what we assume as sociologists is if we look at a whole group of them those social factors, those little [262] idiosyncratic factors are going to average away. I mean if you're away from the model or average white person in some ways I might be away from the average white person in another way, so the larger group we get the more we average out the little idiosyncratic effects and really get to measuring the effects of being white on how you vote.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Curry, I think – A. Yes, sir.

Q. Maybe you're not in my mind responding directly to the Court's question, and that is, what you've got in the percentage black is the percentage of blacks among registered voters; that doesn't measure, that's not saying that 90 percent of the votes were cast by blacks? A. Right, it doesn't.

Q. What's the authority, what's the rationale and validity of using the percent of registered blacks as a measure of how many black votes were cast in that precinct for a candidate? A. In a free election system we don't, we don't know, as you said, how an actual black or white person voted. But as I said, we look at the average effect inside a precinct. We've got something that we can really [263] measure. We know.

THE COURT: I'm sure you'll make it clear to me as we go along but that was the question I was concerned about and I still don't see how this approach so far does it. I can see how in an election where you have a primarily black precinct and you have so many votes you've got something concrete to go on in a particular race. I don't know.

Q. Dr. Curry, let me ask, well, excuse me. A. Yes, sir.

Q. Were you going to ask another question?

THE COURT: Go ahead, sir.

Q. Let me just ask this, since we don't have, and it's impossible to have the information of how many blacks voted for this candidate and how many whites voted for this candidate because we have a secret ballot on it. A. Yes, sir.

Q. Is it permissible and is it considered profesionally acceptable in the field of applied sociology to use the next best data in averaging a large number of samples, that is, a large number of precincts? Is it professionally acceptable to use the next best information, which is the percent of blacks and whites registered? A. It most certainly is, sir, * * * * *

[271] A. Yes, sir. I was told by you that Judge Pittman accepted a .50 "r". square as being significant and so I followed that even though that seems lawfully high to me because social scientists are used to representing any, you know, if race explains 30 percent of how a vote is going that would be significant to me as a sociologist, but I understand in a court of law that if it explains more, if race explains more than half of the relationship between –

THE COURT: What would you consider an acceptable "r" two factor to establish it? A. The way I look at it, we usually use "r" square to estimate how good our guess is going to be. If we have a small group fo something, a sample, like if we only had four or five precincts for Pensacola and calculated an "r" square for those four or five and then guessed about the other hundred fourteen then "r" square would mean, would be meaningful to say how good can we get about those hundred fourteen, but right now we put all hundred fourteen in here to get the "r" squares we're working with here. So what this really is, is the measure of how much polarization, this is an exact measure of how much polarization there is across precincts so that you can just say how much is satisfactory, how much of a vote should be explained by a person's race, should be 30 percent, 10 percent.

THE COURT: Well, I was asking you what figure was acceptable to you, what you think you should use. This incidentally, this is just a hypothetical here?

A. This is still a hypothetical, sir. Yes, sir.

THE COURT: We're going to get to whatever you've done in this county? We haven't gotten that?

A. Yes, sir.

THE COURT: When we get to whatever, you say .50 "r" square to you is high. Isn't that what you said?

A. It's very high, yes, sir.

THE COURT: What do you mean by that?

A. That means as far as I'm concerned, sir, this is a personal, this becomes a personal opinion. Half of the percentage vote per precinct shouldn't be being explained by race. It seems that politicians should be speaking to all communities in the city to a degree that not that much percent will be.

THE COURT: I see. In other words if it was down at zero you'd say no polarization?

[273] A. As it approaches zero that would be fine.

THE COURT: And what spot above that would you say is an indication of polarization?

A. I'd say, I'll settle for the .50, sir, not knowing that much about the way the law should work.

THE COURT: The way the what?

A. The way the law should work, how much polarization is acceptable.

THE COURT: The question is whether the black vote is being diluted.

A. Yes, sir.

THE COURT: And whether there is evidence of blacks voting for blacks and whites voting for whites. That's not exactly a legal point, but the question is on your statistics where would you draw the line or put the line that indicates that in a particular race whites were voting for whites and blacks were voting for blacks?

A. I have drawn the line at fifty, sir.

THE COURT: You have?

A. Yes, sir.

THE COURT: Even though you think it's high you would stay with fifty?

A. Yes, sir, I will, because fifty works quite well in this case.

THE COURT: Go ahead, sir.

* * * * *

[299] BY MR. BLACKSHER:

Q. Dr. Curry, may I interrupt a second. A. Yes, sir.

Q. On the point whether it's Democratic Party affiliation or race which is the predominant influence, could you explain how the stepwise regression tells you which factor is having more influence on the percent vote by looking at the outcome there? A. Yes, sir. Are you satisfied that there's polarization in every black race in the school board and -

THE COURT: Well, I'm satisfied that your figures show that.

A. Yes, sir.

MR. FLEMING: I thought the Court was asking the questions. A. I'm sorry. I was just trying to save time.

THE COURT: Is there anything else you want to ask him?

Q. Yes, sir, I just wanted him to point out what a stepwise regression means so that you can tell which of these factors, demographic factors, the computer tells us had the most influence on the outcome. A. Let's look on page 37 of the summary sheet, tab 43, in the book on school board races. Change that to tab 38. Okay, here's why we used income and female, which [300] we also have, and Republican, if it was a general election, we counted Republican, because we assumed the Republicans weren't voting in the Democratic races. Here's what happens. The computer in setting up this equation, it looks at this correlation matrix and says, "Well, what relates most to the percentage of votes a candidate is getting," like here's the percentage of votes Marshall is getting. As you can see, this is flip side in each case. One is just a negation of the other. Okay, for running this on Marshall the computer looks and says, "Which one of these independent variables here, income counted, and these three, which one of these has the largest correlation," is black, so it runs black in first and takes black out and then it runs, gives us the regression equation for just black and then it looks to see which is the next largest. In this case it's percent female. Then it looks to see which is next largest, in this case percent Republican, and then the last one goes in and there's a summary table which is easier to interpret than these pages. The summary table is right here and this summary table allows us to tell how much of the variation in vote for a candidate like Marshall, in this case, Carol Marshall, is determined by this. This is on page 6, under tab 38.

[301] Q. Got you. A. Okay, this says that 91 percent of the differences in votes for percent Marshall was determined by black; .03 percent is determined by the difference in Republicans.

THE COURT: When you say black, you mean determined by race? Is that what you mean?

A. Yes, sir, by race. Excuse me. I use black. It really should be race.

THE COURT: What you're saying is that 91 percent of the determination came from polarization of votes?

A. How many he got.

THE COURT: Marshall? That's what it amounts to?

A. Yes, sir.

THE COURT: That was a race with Dr. Spence?

A. Yes, sir.

THE COURT: I see what you're saying. You're saying the most, according to the computer the fact it was largely the reason for his, those factors to be considered, was race?

A. Yes, sir.

THE COURT: And there was polarized voting in that race?

A. And that's controlling for Republicans, which accounts for 4 percent.

[302] THE COURT: It's a nonpartisan election.

A. Yes, sir.

THE COURT: Your knew that?

A. Yes, sir. At the beginning I was running percent Republican.

MR. BLACKSHER: That was the Democratic Primary.

THE COURT: Just a minute. This is a school board election and the school board election is nonpartisan under Florida law, isn't it?

MR. RAY: No, Your Honor, partisan.

THE COURT: School board is?

MR. RAY: Yes, Your Honor.

THE COURT: I'm in error then. We have a primary in the school board election?

MR. RAY: Yes, Your Honor, in this county it's a partisan election. A. In any case this only explains 4 percent of the variation. It would only detract from female and income. Income, as you can see, explains practically nothing, and female explains practically nothing.

THE COURT: All right, sir. Anything else with him, Counselor?

Q. One last question, Dr. Curry. Is the regression analysis technique you've demonstrated here today a commonly used method of analyzing this kind of [303] political information? A. Yes, sir, it is the best technique to be used, that can be used for analyzing this kind of information.

MR. BLACKSHER: Your witness.

THE COURT: Cross examination?

MR. FLEMING: Thank you, Your Honor. I'm trying

best to figure out where to set up here. I have copies of all this stuff to tote.

CROSS EXAMINATION

BY MR. FLEMING:

Q. Good morning, Dr. Curry. My name is John Fleming. We met at a deposition a while back. A. Yes, sir.

Q. And as you recall, at that time I asked you a number of confusing questions while I was attempting to gain a little knowledge about the regression analysis approach. I've done a little bit of reading since then and I hope maybe we'll have an opportunity to confirm whether or not I've learned anything. Now, you don't regard yourself as an expert in the theory of regression analysis, do you Dr. Curry? A. Expert, yes, sir, as far as, I'd say I understand the theory of regression analysis.

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[341] THE COURT: It really gets to polarized voting.

MR. BLACKSHER: Yes, sir.

THE COURT: In a district, and overall we encourage people to forget the fact of race in voting. You say we've got a situation where they aren't forgetting so now we go to a single-member district where it really gives some effect.

MR. BLACKSHER: I think that is a fair simplification.

THE COURT: It would be nice in this nation if all of us could decide to vote without regard to race, sex, color or creed like the Constitution of the Nation wants us to do. Maybe that day will come, but that's not the case now. Anything else you want?

MR. BLACKSHER: Yes, sir.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. BLACKSHER:

Q. Dr. Curry, I guess we have established there's a difference between the phenomenon of racial polarization and phenomenon of whether you win or lose. A. Yes, sir.

Q. Okay, so if we were just looking at Dr. Spence's [342] returns in the city election, he won? A. Yes, sir.

Q. Do you still have that in front of you? A. No, sir, I don't right now. I'll look it up. You mean the scattergram?

Q. The scattergram. It looks like between tab eleven and tab twelve, page sixty-eight. A. Okay, got it, sir.

Q. Okay, this scattergram, as I understand it from your prior testimony, shows the polarization because in the precincts that were, for example, 90 percent black, Spence got close to 90 percent of the vote. A. Yes, sir.

Q. But in the white precincts –

THE COURT: Counsel, let me. Maybe I've gone too fast. Did anybody else want to cross examine him before we went along? I'm sorry. I didn't mean to bypass anybody.

MR. RAY: No, Your Honor.

MR. CARR: No, Your Honor.

THE COURT: Thank you. Go ahead.

Q. Whereas Dr. Spence was getting 90 percent of the vote in the 90 percent black precinct he was getting what was the, is there a rough average you can see of what he

was getting in the all-white precinct there? Can you [343] tell from this or from one of the statistics?

MR. FLEMING: If I might assist, I think the "Y" intercept is indicated immedately following the scattergram to be 44.8.

A. Yes. I wouldn't necessarily consider the "Y" intercept the average, average of those.

Q. Of the all-white precincts? A. Of the all-white precincts because the 'a" intercepts is allocated as the average, the average votes for Spence per precinct, minus the regression coefficient of slope times the average vote for the average percent black in the precinct, which is a statistical –

Q. The point for those of us who don't want to take a math course, it is that you can't look at the "Y" intercept and say that's the average the all-white or 100 percent white precincts gave the black? A. Sometimes it might be and sometimes it might not be.

Q. And we would have to have you around to tell us which times? A. No, sir, you just have to have a calculator.

Q. No, sir, I would have to have you around. A. Okay.

Q. But the point I'm making here is that somewhere around 50 percent, plus or minus 5 percent, is what [344] the all-white precincts were giving Dr. Spence in this race, right? A. Yes, sir.

Q. Okay, and that is significantly different from the percentage he was getting in the black races and that determines the polarization? A. Certainly, sir.

Q. Okay, but it doesn't determine whether he won or lost. In this case he won, is that right? A. In this case?

Q. Dr. Spence. A. He did win, yes, sir.

Q. Okay, and does this display of how many white precincts Dr. Spence won give some indication of how many white precincts, let's say over here on the left hand margin, that a black candidate must get in order to add to his black totals and achieve an overall majority and get elected? Is this a fair way to judge this? A. That's a way of estimating, yes, sir.

Q. Okay, and isn't it a fact that only in the two examples that we've seen where Hollice Williams won twice, I believe it was, in opposed contests and Dr. Spence this once, those are the only times?

MR. FLEMING: I object, Your honor.

* * * * * *

EXCERPTS OF TRIAL TESTIMONY* OF DR. MANNING J. DAUER

[21] Q. Thank you, Your Honor. Dr. Dauer, that's all the questions I have. Lawyers for the plaintiffs may like to cross examine.

THE COURT: Let's see if we have some, before you take over, sir, anybody else want to?

MR. LOTT: No, Your Honor.

THE COURT: I thought I saw Mr. Ray get on his feet. You may proceed with cross examination.

MR. STILL: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. STILL:

Q. Dr. Dauer, we met in the hall. My name's Edward Still. I'm one of the attorneys for the plaintiffs. Since February, when you were retained by the defendants, how many trips have you made here to Pensacola? A. One.

Q. All right, sir. Now, since your deposition was taken on the 8th of May have you made any further analysis of Pensacola and Escambia County which would further support or detract from the conclusions you made in that deposition? A. No.

Q. Has anyone discussed with you the testimony that [22] has been elicited in this litigation so far regarding responsiveness, polarization, dilution and campaign tactics? A. I have had two consultations with counsel and there has been, but there has been no detailed presentation of evidence presented in the case. I have not sought to master the situation in Escambia County.

*These excerpts inadvertently were omitted in printing. The other excerpts of Dr. Dauer's testimony may be found in Volume II to this Joint Appendix at page 578.

Q. All right, sir. Now, I believe during your deposition it was your opinion on the basis of the information you had at that time that you did not have an opinion as to polarization in the county but that you had found a polarized vote in the School Board and you had not found polarized voting in the city. Is that correct, sir?

MR. CARR: Your Honor, I have an objection to make First of all this is not within the scope of direct examination and secondly Dr. Dauer said on direct examination he had no opinion.

THE COURT: I disagree with you. It's within the proper scope of cross examination because there's some background. I didn't understand the question. Will you ask it again.

Q. Yes, sir. Let me break it down into three parts. With regard to the County Commission, on your deposition you did not express an opinion as to whether there was polarized voting for that body, is that correct, Doctor?

THE COURT: Was he asked? Was he asked? Are you [23] trying to say, are you going by something in this deposition? Was he asked did he have an opinion in the deposition?

MR. STILL: Yes sir.

THE COURT: Doctor – he's not said anything to the contrary here that I know, but go ahead, Doctor. Do you know what he's talking about?

A. Yes, Your Honor. I examined certain voting results in regard to elections since 1971 for the School Board, the County Commission and the City.

THE COURT: Yes, sir. All right, sir.

A. In regard to the specific black-white opposed elections. This was, as I've stated, one factor in regard to dilution. And it showed that the elections where there were

black-white candidates did have polarization in the county except in two elections, which were in 1974. But, and there I was using a measure that if the candidate, if the black can didate got 40 percent in the white precincts the result was that it was not. So out of, oh, ten or eleven elections I found polarization in the voting proper between black-white candidates, if it were eleven I found polarization in nine and not in two. On the other hand I also looked at the race of Justice Hatchett, who ran in the county at large, and he carried the county at large and he carried a majority of the white precincts. So that was the case of a black-white opposed candidate in the same precincts [24] but a different election. Certainly it had nothing to do –

THE COURT: There again, just looking at that alone is some evidence but is meaningless, standing by itself, that is; it doesn't establish anything. There may have been other factors in that race, other situations here and that kind of thing that accounted for it.

A. Well –

THE COURT: You can't just say that that was lack of polarization in that vote on that race. I mean it works both ways, doesn't it?

A. On the other hand if there had been polarization and white supremacy was the principal issue and he was opposed by a white candidate he would not have carried the county. So I think I –

THE COURT: If that had appealed to the white voters. In other words if the white voters had been polarized against him he wouldn't have carried the county, is what you're saying.

A. Exactly.

THE COURT: So you're saying this is not a polarized vote?

A. That's correct. And so I'm indicating that there must have been even in the vote a lack of white polarization in that particular race.

THE COURT: Well, I was thinking of some other factors. [25] His candidate, as I recall, was from way down south, from Miami, and he was way up here, and different things got into it. He had strong support from the Bar Association and other things. I'm saying all these things. I don't suppose there's objection from any body to my saying them. I do know those things were true about Mr. Justice Hatchett.

A. Yes, but I'm saying even if he were from Miami and even if the Bar Association did endorse him —

THE COURT: It still means the white votes didn't vote for him.

A. The whites did vote for him.

THE COURT: I mean voted for him; I understand.

A. But I'm also saying that this is only one factor of the total political process, so while this shows some evidence of vote polarization in my judgment that doesn't outweigh on the issue of vote dilution the total question of the delivery of services and so on. And that those are other factors in order to determine vote dilution.

THE COURT: I think I understand that and I believe, you all can tell me, we have no quarrel, I believe, on some expert testimony; his point there as I understand it is that even if you establish polarization that necessarily doesn't indicate dilution. You have to put other factors.

A. That is correct.

THE COURT: I believe that's consistent with all the [26] testimony I've heard, is it not?

MR. STILL: Yes, sir, I believe so.

THE COURT: Go ahead, sir.

Q. Doctor, so on the basis of the evidence you looked at regarding polarization, which was just the election returns, leaving out for the moment dilution questions and responsiveness questions, you did find that there had been some polarization of School Board races, is that correct?

A. Yes.

Q. All right, sir. Now –

THE CARR: Your Honor, if I may, he asked the question in such a way as to indicate that the answer to the question could be drawn solely from an examination of the voting returns. The witness has testified it can't be done.?

A. Well, no, I answered in the context that the vote itself was polarized. I didn't say what the result, I would say again that in regard to the School Board the total test is whether services are delivered and whether there are compensatory and vocational education and campaigning in the black community.

THE COURT: You have to get into that on the issue of dilution?

A. Yes.

THE COURT: Go ahead, Mr. Still.

Q. All right, now, Doctor, now you advised the [27] local governments what to look for on these issues of dilution and I presume that's some of the evidence they put on here. Now let's take one aspect of dilution that you men-

tioned, which was, or, excuse me, one aspect of responsiveness, which is appointments to boards and committees. Now, if there were no blacks appointed to boards and committees and yet it was shown that there were some blacks who were qualified to be appointed to boards and committees would you say that that indicates at least in that aspect unresponsiveness by the local government?

A. I would have to look at the question of what qualifications were needed on those particular boards and commissions and also how actively individuals may have made their qualifications known before I could really answer that. And I don't think I can answer that one by itself without knowing the duties of the boards and the qualifications of the candidates.

Q. All right, now, Doctor, you mentioned your study of the Dade County legislative delegation. That study, I believe, was made in 1966. At least it was published in 1966. A. Yes.

Q. That was a completely multimember district in Dade County? A. That is correct.

[28] Q. Now, is it your testimony that because the Dade County legislative delegation was responsive to the needs of blacks in Dade County that that means that all at-large elected groups are responsive to the needs of blacks? A. The Dade County is merely one example. And I would say that you would have to then study, but there have been other studies than mine. For instance there's an article by Profesor Banzhaf in the *Yale Law Review* that points to the same thing. That comes immediately to mind. And he argues in fact that multimember districts are unfair to the, are unfair because it gives a larger impact to minorities.

Q. All right, now, sir. Professor Banzhaf's articles deal with electoral strength and not responsiveness, don't they? They don't make quantitative analysis of the responsiveness of elected representatives? A. I beg your pardon. He argues on that point, he hasn't studied the specific item but he has set up a mathematical model of what the, of whether if you vote for five people you have more impact on the ultimate result in the deliberative body by having voted for five than if you just vote for one.

Q. All right, Professor Banzhaf's is a mathematical model and not based on comparisons?

[29] A. He did not examine specific legislative or commission behavior but he set up a mathematical model.

Q. I believe you stated in your article that the Dade County delegation, you differentiated them from the rest of the Florida Legislature in that they were much more liberal than the rest of the Florida Legislature. Isn't that correct? A. Yes.

Q. And the rest of the Florida Legislature, many of them, were also elected from multimember districts at the time, weren't they? A. I broke this down into segments and I scaled that so that if they came from certain areas I think I adjusted it for that.

THE COURT: Counselor, I hate to interrupt this but I need to take a recess. I've got an important telephone call on another matter. While we're at it, if we can take about a ten minute recess and I'll be right back with you.

(Recess)

CROSS EXAMINATION RESUMED

BY MR. STILL:

Q. Now, Doctor, we were talking about the Dade

County delegation and we were saying that they were a little bit more liberal than the Florida Legislature at-large. Wouldn't it be fair to say that a liberal delegation is [30] usually more solicitous of the needs of a black constituency than a conservative delegation would be? A. Yes.

Q. All right, sir. Now, also in that study of the Dade County delegation I believe that you stated that the Miami Herald, which was the chief daily newspaper there in Dade County, was able to influence from 20 to 40 thousand voters or even more, partly because of the long ballot and the elections at-large. Does that mean that decisions in a large multimember district are probably more likely to be made on the basis of some recommendation like by a newspaper or some other influential group than on the basis of some close personal observation by the voter? A. In that particular case where they had as many as sixteen I stated in that article that I thought that was too large and I recommended at the end of that article that they change over to dividing Dade in quadrants and having no more than five or six in each quadrant so that there could be better voter recognition of the individuals, and that recommendation of mine was repeated to the Florida Legislature in 1971 and was followed out. In other words what I thought was that there should be a balance between having sixteen on the one hand or having single-member districts on the other and therefore I consider that when you get it down to five or six, why, you have about, you are [31] Still within the attention span of the voter but that that also avoids the ward politics aspect of single-member districts.

Q. Would you say that a multimember district of ten members would be too large? A. Yes.

MR CARR: Your Honor, can I ask for clarification of

the question. Is he talking about Dade County or is he talking about in general?

Q. I'm talking about in general. He's testifying in general. Is that a general statement, that the attention span of voters is about the same no matter where you go? A. It is if they all run at the same time. Now, if you stagger the elections that could have a different, in other words it depends on whether you're offering the voter with ten opposed choices in a single election or whether the terms are staggered.

Q. Are you aware that the Pensacola City Council has ten at-large members? A. No.

Q. All right, sir. Now, one of the purposes, as I understand it from your testimony and from other writings, of at-large elections, is to try to produce a body which is more like the whole electorate rather than like the parts of the electorate. Isn't that correct? [32] A. Not quite. I'm suggesting that the parts ought to have their input and then the individuals who are being voted on ought to have the point of view of a variety. But I'm not suggesting that you're just going to have everybody elected, excuse me, everybody represented if you do get this at-large.

Q. All right, not everyone will be represented if you have at-large? Is that what you're saying? A. That is correct.

Q. So really the effect of at-large elections is sometimes to exclude some minority groups from direct representation, is that correct? A. It depends on how you're defining direct representation. I'm defining direct representation as having an influence. If you mean by direct representation that each person in a minority has to have somebody identified with that minority, that would be a different answer.

Q. Now, not necessarily a member of that minority. Let's say someone chosen by that minority as opposed to someone chosen by that minority and the whole majority. A. If the minority is fairly sizable I think the result would be unlikely because if the minority constitutes as much as 10 percent or more of the vote then the chance of that minority being completely excluded would be unusual.

Q. Doctor, let's take an extreme hypothetical here. [33] If we could somehow or another work out through some process the problems of campaign costs and ballot size and voter recognition, would you favor electing the entire Florida Legislature at-large from the entire state?

A. No.

Q. Now, why not? A. Because I've already said I think the attention span of the voters can extend to as many as half a dozen in a particular election.

Q. Well, let's say we could work that problem out. I mean by having staggered elections and it was all carried out through some 100 percent television coverage system and the State paid for the campaign.

THE COURT: You're talking about something you could work out in a state the size of Florida?

MR. STILL: I'm just using that as a hypothetical.

THE COURT: The problem is whether it's realistic or impossible. I don't know where you getting with it. If you want to go ahead, go ahead with the question, I guess, sir.

Q. Well, are there any other reasons besides this problem of the attention span that would militate against having at-large elections for the whole State of Florida?

THE COURT: Are you speaking of an election where every member of the House of Representatives and Senate is elected by the whole State of Florida? Is that what you're [34] saying?

MR. STILL: Yes, sir, that's what I'm saying.

THE COURT: In other words just like you elect the Governor or Senators? You confine it to two or three hundred Representatives, so forth?

MR. STILL: Yes, sir.

A. I'm tempted to answer it this way. This happened once in Illinois when they were unable to pass an apportionment bill and it was a mess.

Q. But if we could get over that ballot size and that attention span problem are there any other reasons why we shouldn't have state-wide at-large elections? A. I don't see how you can. I don't see how you can do that on legislative questions which are as complex as would affect the entire state.

Q. All right, so there are some regional or localized differences which might require local representation, is that correct? A. That is correct.

Q. All right, sir. I believe you stated in your deposition that Malcolm Jewel had written an article which supported your position favoring at-large elections. Were you talking about the article in the *George Washington Law Review* of 1968? A. Right. I did not say that he necessarily [35] supported my position. I said that he discussed the pros and cons on this question and I was referring to that particular article and he did not support my position. He simply stated what the issues were on both sides of the question.

Q. Well, in fact he pointed out that ethnic minorities and particularly blacks had more of a chance of being elected in single-member districts, didn't he? A. As far as a specific black being elected, his answer is yes.

THE COURT: Yours would be too, wouldn't it, Doctor?

A. Yes.

Q. Now, Doctor, let's talk for a moment about responsiveness again. It's my understanding that you're saying that responsiveness is one indication of whether or not there is dilution of the black vote in a particular election, elective body. Is that correct? A. Yes.

Q. Would responsiveness also be an indication whether there was a dilution, let's say, of rural votes or of urban votes in, say, a state legislature? A. Yes.

Q. Let me read you a statement, Doctor, which is taken from an article by Herbert Jacob and Michael Lipski, L-I-P-S-K-I, called "Outputs, Structure and Power," and it's [36] found in the book *State and Urban Politics* edited by Hofferbert and Sharkansky. Are you familiar with that book and with that article? A. I'm familiar with some chapters but I don't remember this particular part of it.

Q. All right, let me read you this statement: "Three independent investigations using slightly different analyzing techniques have concluded that legislative malapportionment has not been related to a distinctive pattern of outputs. Policies which might be heavily favored by the underrepresented urban majority are no more in evidence in well-apportioned than in poorly-apportioned states. The substantial differences in the level of outputs are accounted for by a variety of other variables, not by

legislative malapportionment." Now, would you agree with that statement, Doctor? A. No. As a matter of fact I've written in opposition to that point of view because what they did was that they measured certain items which were statistically measurable and they arrived at it in my judgment on the basis of partial evidence. They did not, they did not, they took more into account the level, for example, of highway expenditures and they took into account the level of school expenditures and they found that those were principally accounted for by what is called incrementalism; that is, [37] it was part of a state budget for roads; next year they appropriate about the same percent and next year the same percent and so forth. But where I think they slipped up was that they didn't ask where the roads were being built or what aspects of the school programs and school services were being delivered. And there is a great deal of controversy in the literature on that point, that they did not go far enough when they stated their conclusions.

Q. In other words it's not how big the pie is but who gets the pieces of the pie, is what you're saying? A. Well, the size of the pie is one aspect but also there can be a differential division of the pie, yes.

Q. And so in terms of responsiveness if we were looking, let's say, at parks, and we found that parks were being built and maintained in white areas and not, in proportionately much larger numbers of acres than black areas, that would be one indicia of unresponsiveness? Is that what you're saying? A. If you can't get to them – I would have to know where the parks are located and how close they are, of course, in order to fully anwer that question.

Q. But I'm saying if there were statistical evidence on

that point and it indicated that, that would be one indicia? A. It would, but I would weight it against who got [38] to the specific parks or swimming pools also.

Q. All right, sir. A. And how close they were.

Q. Now, with respect to what you call white polarization or what Mr. Carr called white polarization, I believe you said that one of the things you must look at is whether the white vote, whether the whites vote as a bloc behind candidates who are opposed to a minority. A. Yes.

Q. Now, Doctor, can you also look at campaigns in which a candidate was not necessarily opposed to a minority, he didn't have to be a J.B. Stoner of the States Rights Party in Georgia, but instead was just not relevant to the needs of the black community? A. If that were the case in the particular candidate's program and the way he voted, that would be significant.

Q. Now, in your chapter in *Changing Politics of the South* edited by Havard, I believe you stated that one of the reasons for the gap in registration by blacks was that you said it was the product of such cultural factors as limited relevance to the Negro of campaign issues? A. Yes.

Q. Now, would you still hold by that, that if we found a lower turnout or lower registration rate in a [39] particular community it might be indicative of a lesser degree of relevance of campaign issues to blacks than to whites? A. It could be an indicator.

Q. Now, Doctor, if I told you that the evidence in this case showed that in the very same election, the very time you walked into the polling place, that blacks were casting twice as many votes in races that involved a black candidate than they were in races which involved white can-

didates, would that indicate to you that there was a degree of lack of relevance of the campaign issues among those white candidates running against each other as opposed to a black candidate running against a white candidate?
A. It might or might not. Let me mention this. When a particular – here let me go on an example from something else. In the case of the Irish, when the Irish were first enfranchised, they first showed greatest interest in Irish candidates. After a time they showed greater interest in issues. So correspondingly on what you're stating I would say that at this point, and I've already indicated what I looked at are the black returns, the black returns show a blocking around their particular candidate and a high interest level. Now, in the case of how they turn out, how many votes they cast between the white candidates, then I would say it would depend on the platforms of those white [40] candidates and whether those white candidates were relevant. That would be another factor I would want information on.

Q. But you have not made such analysis yourself?
A. No, I haven't done that.

Q. Okay, Doctor. Now, also in your chapter in *Changing Politics* you said that, on page 160, "When the Negro vote helps to nominate a liberal, however, that candidate is likely to lose the general election. In Florida as in most states outside the South the concentration of the Negro vote in certain localities rather than its mere presence is the most important factor in its effect on politics." Would you say that that statement is still true? A. All right, it depends on the, I would say it is less true today than it was when I wrote that. The book was published in '72 and I wrote that in '71. And also it has to be measured against the degree of liberalness of the candidate. So that if, so that on a scale, how liberal a can-

didate is, then if the candidate is very liberal he moves a considerable proportion of the moderate vote. So it has to be measured in terms of time and also the degree of liberalness of the candidate.

Q. And generally, just so we can make sure we're defining terms correctly here, liberals we would say generally favor more social welfare programs and more redistribution of the income programs which would help the [41] poor more, is that correct, Doctor? A. By and large this part is, although I think there's growing awareness among moderates that it does redound to the benefit of the community if there are fewer unemployed and therefore you have to have, spend enough for vocational training and you have to have some job training programs of apprenticeship type and that a certain amount of expenditures are in the better interest of the entire community. That would be a point of view not just of liberals but also of moderates.

Q. Now, Doctor, you made the statement in your direct testimony that, let me see if I've got this correct. You were talking about the incumbency factor as it applied to black candidates and you said if there was polarized voting that the incumbency factor would be far outweighed by the polarized voting, that the racism of the whites, if it was in existence, would outweigh the incumbency and the blacks would have been defeated. A. Yes.

Q. Is that a fair statement of what you said? A. Yes.

Q. Now, Doctor, what support do you have for that statement? Is it just a general proposition that racism is stronger than incumbency always? A. No. I'm saying

what is evidence of polarization. [42] I'm saying that there are many, many situations where there is not polarization that is so extreme but it measures the intensity of the polarization.

Q. Well, Doctor, are you equating winning an election with there not being polarization and losing an election with there being polarization? A. As far as looking at a particular race between candidates I am talking about not just winning or losing but coming within 40 percent. Our definition in political science is that if two candidates are within the sixty-forty range then it is not severely polarized. If it gets to sixty-five, thirty-five, there is a considerable amount of polarization.

Q. So you're saying that if a black candidate gets at least 40 percent of the vote then there's no polarization? A. I would rather put this on a scale. I would say that there's some but it's not so, but it is not severe.

THE COURT: It would depend a little bit too about the percentage of black and white votes in a particular place?

A. Right.

THE COURT: That would have to be a factor, wouldn't it?

A. Right.

Q. Well, that was my next question. I mean 40 percent of what? Forty percent of the total vote or 40 percent [43] of the white vote or what?

A. I was talking about whether or not the white, I was assuming a white precinct and I'm saying if the black candidate can get 40 percent.

THE COURT: Oh, I didn't understand that from the testimony.

A. Yes.

Q. Doctor, do yo know of any other political scientists that have used this 40 percent test as an indicia of polarized voting? A. Yes. I certainly did not develop it. It is in many of the books on legislative politics. This is used. In fact Jewell is coauthor of one of those books with Patterson on legislative politics and they use it, for example, not in there in terms of black-white but in terms of what they call polarized Congressional districts, and there are a number of articles on opposed Congressional elections and in some where you even classify states as to whether or not the state politics is polarized so much that the candidate doesn't have a chance as between Democrats and Republicans.

Q. So that's really a predictive test to say, for instance, whether or not a Republican has a chance of winning in a Democratic state; we want to know how Democratic a state is? Is that what you're saying? [44] A. That's right. And, well, it's not just predictive. It's also analytical of what goes on.

Q. All right, sir. Now, do you know of any study which has used it in black-white situations? A. No, but I've seen it used in other minority situations.

Q. What other minority situations? A. For example some of the tests of attitudes toward Irish and the like. There are some historians, there are historical examples of that.

Q. All right, Doctor, let's go back to the Republican-Democratic situation for a minute in the book by Jewel. Does Jewel analyze those races only from the stand-point

of how well a Republican candidate did in a heavily Democratic ward or does he look at how the Republican candidate did in the whole state or the whole district or whatever the Republican happened to be running in? A. It doesn't make, well, it depends on what the unit of analysis is. You could use it in any of those. But specifically he's using it in regard to Congressional districts.

Q. Well, now, if you could use it in any of those and you have utilized it only in predominantly white precincts then all you're able to tell us whether those predominantly white precincts are polarized and not whether the [45] whole electorate is polarized, is that correct? A. No. I used it in all of the precincts and I found that in certain of the races, just looking at black-white candidates, for example, that the black precincts were polarized and in the city precincts, for example, with some black-white candidates it was and others it wasn't. In the Hatchett race I found that it was, that it was not. In the case of the County Commission and the School Board races I found two where the 40 percent did not show polarization and some eight or nine where it did.

Q. Now, Doctor, in your analysis you only looked, did you not, at the wards which were 95 percent or above white or 5 percent, or excuse me, 95 percent or above black? A. No, no, I didn't. We broke them down by percent into five categories and we took a percent that were heavily black, 50 percent, up to that figure, then down to 30 percent, then 30 to 5 and then under 5.

Q. And your analysis then is, of polarization, is based upon the analysis of all five of those groups and not just the two groups at the extremes? A. That's right.

Q. That's not what you told us in your deposition, is

it, Doctor? A. I think that in the deposition I stated that we had scaled them and that, whether I described the scaling [46] in as much detail as I have now I do not remember at this point, but that's what we did.

Q. Excuse me just a moment. Doctor, can we use regression analysis to tell whether or not an electorate is polarized? A. The answer is that in a stepwise regression you're getting an "r" square and the "r" square is going to show which is the first factor.

THE COURT: Is going to show what, sir?

A. Which factor explains more of the division than any other. And that goes back to what I said on direct, that if, that on stepwise regression I think it skews it if part of the electorate, in this case the black part, is polarized and the white is not; it still would show that black-white is the number one factor in that particular vote that you're studying but I would argue that that showed that the black vote was polarized but the white, but it is not conclusive as to the white vote. That's why I've used this 40 percent rule, which is called the difference of means test.

Q. All right, Doctor, let me ask you this. On the elections that you studied, which were only contested elections in which blacks ran, is that correct? A. Yes.

Q. Did you look at any of the regression analyses [47] or scattergrams that have been prepared by the plaintiffs? A. Yes.

Q. Did you find any skewing among black precincts or white precincts? A. I found skewing among the blacks, black precincts, and I did not find polarization among the whites in those specific races that I've already indicated, which were two in the county at-large. I didn't find it in the

Hatchett race and I didn't find it in many of the, in five out of, I think, nine of the city races.

THE COURT: What does skewing mean, Doctor?

A. Skewing means that if the black vote is polarized and the white is not you can't generalize about the total electorate; you can only generalize about part of it. And skewing means that you're coming to a false conclusion.

THE COURT: Because you don't know about the white?

A. Because you don't know about the white.

THE COURT: And you said what about it in these things? Did you say you found no skewing?

A. I found that all of them were skewed because of the heavy vote in the black precincts and that that's a fault in regression analysis.

* * * * *

Office-Supreme Court, U.S.
FILED
MAR 7, 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1295

In the
Supreme Court of the United States
October Term, 1982

Escambia County, Florida, et al,

Appellants,

v

Henry T. McMillan, et al,

Appellees.

On Appeal from the United States Court of Appeals for the Fifth Circuit

MOTION TO AFFIRM OR DISMISS

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March 1983

Questions Presented

1. Is the District Court's finding of purposeful racial discrimination, affirmed by the Court of Appeals, clearly erroneous?

2. If the District Court's finding of racial intent is clearly erroneous, should the judgment against Escambia County's at-large elections be affirmed nonetheless under the "results" standard established by the 1982 Voting Rights Act Amedments?

3. Where the lower courts have correctly followed the principles of Wise v Lipscomb, 437 US 535 (1978), in shaping the remedy, should this Court review the construction of Florida's constitution and statutes made by the District Court in Florida and affirmed by the Court of Appeals for the Fifth Circuit?

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Motion to Affirm or Dismiss

The Appellees move the Court to affirm the judgments below or dismiss this appeal for the reasons set out below.

I. The Fourteenth Amendment violation found by two courts below should be affirmed, under Rogers v Lodge, as not clearly erroneous.

The District Court in this case, relying on Nevett v Sides, 571 F2d 209 (5th Cir 1978), cert. denied 466 US 951 (1980), anticipated correctly the at-large vote dilution standard announced in Rogers v Lodge, __ US __, 102 SCt 3272, 73 LEd2d 1012 (1982). It found dilution of black voting strength from an "aggregate" of the facts called for by Zimmer v McKeithen, 485 F2d 1297 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Bd. v Marshall, 424 US 636 (1976), JS 89a. Then in an additional, separate analysis of the election system's 110-year legislative history, using the evidentiary criteria of Village of Arlington Heights v Metropolitan Housing Development Corp., 429 US 252 (1977), the District Court found, as a matter of fact, that the at-large scheme has been maintained with an invidious racial motive, JS 74a-75a, 92a-93a, 96a-98a. This racial intent was "bolstered by the findings under the Zimmer factors. . . ." JS 98a.

The first opinion of the Fifth Circuit panel interpreted the plurality opinion in City of Mobile v Bolden, 446 US 55 (1980), to have discredited the Zimmer analysis, JS 39a. It then reviewed the District Court's finding of

racial motivation behind the 1975 and 1977 charter proposals of the county commissioners "in addition to and apart from" the Zimmer findings, JS 39a. It reversed the District Court, which had rejected the commissioners' in-court denials of racial motives, because it found no contrary evidence in "the testimony," JS 42a. The first Court of Appeals opinion treated the District Court's "heavy reliance on Zimmer criteria as circumstantial evidence of intent to discriminate" as inconsistent with the teaching of Bolden, JS 13a, and did not consider the finding that Zimmer facts bolstered in-court testimony about racial motives in 1975 and 1977, JS 42a-43a.

After Rogers v Lodge, the Fifth Circuit panel rendered a new opinion on rehearing, in which it concluded that the District Court's joint consideration of Zimmer evidence and Arlington Heights evidence to support its finding of discriminatory intent was exactly what Rogers called for. Accordingly, it reviewed all the evidence together and affirmed the judgment, on Fourteenth Amendment grounds, as not clearly erroneous. JS 21a-22a

On appeal to this Court, the County Commissioners seek to avoid the unlikelihood of success under Rule 52's clearly erroneous standard[1] by constructing this faulty

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1. Rogers v Lodge, supra, 102 SCt at 3278, reemphasized the intensely factual nature of the inquiry into invidious purpose and the deference that should be accorded to the trier of facts, citing Pullman-Standard v Swint, __ US __, 102 SCt 1781, 72 LEd2d 66 (1982). This Court has also confirmed its reluctance, even in

syllogism: (1) if the District Court's Zimmer findings, standing alone, do not prove racial intent, and (2) if the trial judge's disbelief of the present commissioners' in-court denials, standing alone, does not prove racial intent, then (3) the combination of this evidence cannot prove racial intent, JS 21. But this is only an elaboration of the argument this Court rejected in Rogers, which held that the fact finder must consider "all the relevant facts" and must weigh them in the "aggregate" to detect discriminatory intent. Rogers, supra, 102 SCt at 3278. Rogers v Lodge has repudiated theories, like the one Appellants advance here, that "view[] each of the factors relied upon below in isolation." Bolden, supra, 446 US at 103 (J. White dissenting).[2]

The evidence supporting the finding of racial intent in this case is overwhelming, even more so than the evidence in Rogers v Lodge, in the sense that it includes proof that satisfies both Zimmer and Arlington Heights analyses. The District Court found for the black plaintiffs

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(note cont'd)
vote dilution cases like this one, "to disturb findings of fact concurred in by two lower courts." Rogers, supra 102 SCt at 3279 (citations omitted).

2. Consequently, this appeal does not present the question, as claimed by the County Commissioners, whether an at-large system can be declared unconstitutional where there is "no" evidence of invidious intent. As even the arguments in the Jurisdictional Statement demonstrate, there was abundant evidence supporting the judgment below, and the question is whether the trial court's fact findings are clearly erroneous.

on three of the four primary factors (and partly on the fourth factor) and three of the four enhancing factors under Zimmer, JS 88a-89a. Most of the factual indicia of discrimination cited by this Court in Rogers were present in the instance case as well: (1) no black candidates have ever been elected because of (2) "voting . . . severely polarized along racial lines," JS 14a, the central facts that "bear heavily on the issue of purposeful discrimination," Rogers, supra, 102 SCt at 3279; (3) past discrimination continues to be felt in the form of separate, racially segregated societies, bloc voting, and blacks' exclusion from the inner circles of government, JS 86a-87a; (4) there was past discrimination against blacks in education, JS 86a; (5) white officials have been unresponsive as shown by the appointment of only token numbers of blacks to boards and committees and by ignoring housing discrimination, JS 84a-85a; and (6) the depressed socio-economic status of Escambia County's blacks contributes to their political exclusion, JS 86a.

The District Court's Arlington Heights analysis went even further than the Rogers trial court's findings and showed a specific racial intent behind the state's choice to retain at-large county commission elections. From Reconstruction until 1901, Florida law required the governor to appoint all county commissioners "[t]o ensure that blacks were not elected in majority black counties," JS 74a. After the 1889 poll tax had disfranchised enough blacks, the state constitution was amended in 1901 to provide at-large general elections for county

commissioners, JS 74a-75a. But the white-only Democratic Party conducted its primaries for county commissioners in single-member districts. Blacks could only vote in the at-large general election, JS 75a. The resulting "anomaly" was that, for half a century, as a practical matter, county commissioners were chosen from single-member districts in elections in which only white people could vote, id. The District Court found that this sequence of historical changes in county commission selection schemes was "clearly race related" and was part of "a concerted state efforts to institutionalize white supremacy," JS 74a, 92a.[3] In 1954, after this Court had declared white primaires to be unconstitutional, the Florida state courts struck down single-member district elections in the newly opened county commission primaries, JS 75a.

Because of existing case precedent concerning "race-proof" historical periods, the District Court declined to find racial intent in the 1901 adoption of at-large general elections, JS 93a and n.8. But it considered this history as backdrop for the events in 1975 and 1977, when the incumbent commissioners rejected the recommendations of their own home rule charter committees

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3. These findings concerning the historical sequence of events, at least from the 1907 statewide primary law to the elimination of single-member district primaries in 1954, provide an alternative ground for affirming the judgmetn below. The District Court has in effect found that the maintenance of at-large general elections had a clear racial purpose during this period.

to change to district elections, 92a-98a.[4] Based on the post-trial admission of defendant's counsel and the judge's own "impression at trial," the District Court drew "the reasonable inference" that the commissioners had been motivated "by the possibility single-member districts might result in one or more of them being displaced in subsequent elections by blacks," JS 98a.

In its original opinion the Court of Appeals held that "the desire to retain one's incumbency unaccompanied by other evidence ought not to be equated with an intent to discriminate against blacks qua blacks," JS 42a-43a. However, the District Court had not grounded its finding of racial intent on the commissioners' "motive to exclude all other potential candidates," as the Court of Appeals thought, JS 20a n.19 (emphasis added), but on their motive to exclude black potential candidates specifically. On reharing, the Fifth Circuit acknowledged

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4. The Appellant County Commisioners raise the misleading contention that they cannot be held responsible for retention of the racially discriminatory at-large scheme because the county's voters rejected a referendum to change to single-member districts on November 6, 1979, JS 21-22. They criticize the judgments below on grounds that "no evidence was introduced and no findings were made" that the voters were racially motivated, JS 22. But the 1979 referendum election referred to took place sixteen months after the District Court rendered its decision against at-large elections on July 10, 1978, JS 71a. The trial court's findings were based on the refusals of the County Commissioners in 1975 and 1977 even to submit a single-member district option to the electorate, JS 96a.

Justice Stevens' admonition in Rogers that perpetuating the political dominance of an entrenched racial majority is not a legitimate justification for a dilutive election system, id., citing Rogers, supra, 102 SCt at 3287 (J. Stevens concurring). The Court of Appeals affirmed the judgment after considering "a broader range of evidence," including the Zimmer factors, JS 20a n.19, 21a.

In every respect, Rogers v Lodge commands that the decisions below be afirmed as correct under the Fourteenth Amendment. The legal analysis is correct, and there is more than ample evidence in the record to support the findings of the District Court.

II. Alternatively, the judgment below should be affirmed under the amended Voting Rights Act.

The District Court ruled that the black plaintiffs were entitled to relief under Section 2 of the Voting Rights Act of 1965, 42 USC §1973, JS 101a.[5] The Fifth

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5. The District Court had held that the at-large scheme violated the Fifteenth Amendment, JS 100a, and concluded that it necessarily violated §2 of the Voting Rights Act as well, JS 101a. The Fifteenth Amendment is also available, therefore, as a basis for affirming the judgment of the District Court. In addition, a separate Fifteenth Amendment theory advanced by plaintiffs was not mentioned at all by the Court of Appeals. It is a direct challenge to the line of precedent which holds that no racial intent may be inferred in the adoption of a facially neutral election scheme during a "race-proof" period when blacks were already disfranchised, JS 20a n.18, 93a and n.8. The proper constitutional view of "race-proof" election changes is that the exclusion of

Circuit thought plaintiff's had "presented a cogent arugment that the amended Act entitles them to relief," but it declined to address the statutory issue because of the clear Fourteenth Amendment claim and the need for a speedy remand in time for new elections, JS 3a-5a n.2. On appeal to this Court, the amended Section 2 affords an alternative ground for affirmance.

Because of this Court's decision in City of Mobile v Bolden, 446 US 55 (1980), Congress amended Section 2 of the Voting Rights Act "to make clear that proof of discriminatory intent is not required to establish a violation of Section 2" and to permit plainitffs to prove violations by showing that minority voters were denied "an equal chance to participate in the political process, i.e., by meeting the pr[e]-Bolden results test," Senate Report, No. 97-417, 97th Cong. 2d Sess., pp. 2, 16 (1982)

(note cont'd)
black voters from those legislative choices, particularly where the change was adopted by a referendum election, like Florida's 1901 constitutional election, is itself a per se violation of the Fifteenth Amendment. Bell v Southwell, 376 F2d 659 (5th Cir 1967); Hamer v Campbell, 358 F2d 215 (5th Cir 1966); Alabama v United States, 304 F2d 583 (5th Cir 1962). "[T]he sole question remaining is the sort of relief to be granted." Bell v Southwell, supra, 376 F2d at 662. Even in cases like this, where relief is being sought decades after the violation, the election plan adopted without blacks' participation should be enjoined unless the state can affirmatively demonstrate that all its discriminatory effects have been eliminated "root and branch." Green v County School Board, 391 US 430, 437-8 (1968).

(hereinafter cited as "S.R.").[6] To prevail on a claim of racial vote dilution under Section 2 of the Voting Rights Act, Congress intended that plaintiffs "show that the challenged system or practice, in the context of all the circumstances in the jurisdiction in question, results in minorities being denied equal access to the political process," S.R. at 27. "The 'results' standard . . . embodies the test laid down by the Supreme Court in White [v Regester, 412 US 755 (1973)]," S.R., p. 27.

The panel's first decision in this case was one of the reasons cited in the Senate Report for adopting a "result" test as distinguished from the more demanding "intent" test of Bolden. Congress affirmatively determined that the standard applied by the panel in this case was too high.

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6. 42 USC §1973 (1976), as amended by Pub.L. 97-205, 96 Stat. 131 (1982). This amendment took effect upon enactment, i.e., June 29, 1982, and should apply to pending litigation. See generally, Hutto v Finney, 437 US 678, 694-695 n.23 (1978); Bradley v Richmond School Board, 416 US 656 (1976); Cort v Ash, 422 US 66, 76-77 (1977); United States v Alabama, 362 US 603 (1960); United States v Schooner Peggy, 5 US (1 Cranch) 1032 (1801). Both the House and Senate Floor Managers stated that "Section 2 . . . will, of course, apply to pending cases in accordance with . . . well established principles . . ." 128 Cong. Rec. H3841 (daily ed. June 23, 1982) (remarks of Rep. Sensenbreener); 128 Cong. Rec. S.7095 (daily ed. June 17, 1982) (remarks of Sen. Kennedy).

> McMillan v Escambia County, in which plaintiffs prevailed in part was frequently cited by opponents of the "results" test. Escambia involved the at-large systems of electing county commissioners, city councilmen and school board members in Pensacola and Escambia County, Florida. The Fifth Circuit sustained the judgment for plaintiffs with respect to the School Board and city council, but not as to the at-large system of electing county commissioners. However, even a casual reading of Escambia reveals that it was one of those rare instances where the court found a "smoking gun" to satisfy the heavy burden imposed by Bolden.

S.R., pp. 37-38. Thus, Congress adopted a less onerous "result" test based upon White v Regester, supra and Zimmer. The gloss of intent that has been added in Fourteenth Amendment cases such as Washington v Davis, 426 US 229 (1976), Arlington Heights, Bolden, Rogers, and Nevett, is simply unnecessary for plaintiffs proving a case under Section 2.

The legislative history of the 1982 Voting Rights Act Amendments further makes clear that "unresponsiveness" is not an essential part of plaintiffs' case. That was a central issue argued by the Appellants in the Court of Appeals, 638 F2d 1248.

> Unresponsiveness is not a central part of plaintiff's case . . . therefore, defendants' proof of some responsiveness would not negate plaintiff's showing by other, more objective factors enumerated here that minority voters nevertheless were shut out of equal access to the political process. The amendment rejects the ruling in Lodge v Buxton, [639 F2d 1358 (5th Cir 1981)] and companion cases that unresponsiveness is a requisite element . . . .

S.R., p. 29, fn. 16.

The Senate Report also lists the types of factors which are typically relevant in proving a discriminatory result.

> 1. the extent of any history of official discrimination . . .
>
> 2. the extent to which voting . . . is racially polarized;
>
> 3. large election districts, majority vote requirements anti-single shot provisions, or other voting practices . . . that may enhance the opportunity for discriminiation . . . ;
>
> 4. a candidate slating process . . . ;
>
> 5. the extent to which members of the minority group . . . bear the effects of discrimination in such areas as education, employment and health . . . ;
>
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7. the extent to which members of minority groups have been elected to public office in a jurisdiction.

S.R., pp. 28-29. Finding all of these factors to be present in Escambia County (except for a candidate slating process) and applying the Zimmer analysis, the District Court concluded "that the voting strength of blacks is effectively diluted under the present election system[] of the county, JS 90a, and that "black candidates are otherwise denied access to that system." JS 98a. These are the findings of fact called for by the Section 2 "results"

standard, and Appellees are entitled to relief under the statute.

III. Under the standards adopted by this Court and controlling Florida law, the District Court was correct to order its own districting plan.

The Appellants challenge the remedial order of the District Court solely on the grounds that the Courts rejected their contention that the County Commission has the authority to adopt a non-at-large plan of apportionment, JS 27.[7]

The District Court found that, because Escambia County had refused to adopt the home rule option offered by Florida law, the Escambia County Commission was bound by explicit state general laws governing the method of electing county commissioners and lacked the legislative authority to reapportion itself, JS 68a. The County Commissioners do not here contend that under ordinary circumstances they could by ordinance vary the all at-large election scheme specified for non-home rule

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7. Although the district court adopted a five single-member district plan in 1979, the timing of relief and the exact configuration of the plan are presently being reconsidered by the district court. For this reason, the appellants' appeal is premature. For aught that appears, the district court may adopt a plan which is entirely to the liking of the appellants. This appeal presently concerns only who has the power to draft and adopt the plan, rather than the plan itself.

counties by Florida law. Rather, they argue that by striking down at-large elections in Escambia County, the federal court has invested the County Commissioners with legislative authority the state constitution grants only to home rule counties. This Court should reject the Commissioners' argument and affirm the District and Circuit Courts' application of the principles of Wise v Lipscomb, 437 US 535 (1978).

The critical feature of Wise was that the City of Dallas government exercised home rule powers. The Texas Legislature had delegated to Dallas the legislative power to determine how it would elect its local government. Through its charter, Dallas had selected at-large elections. The District Court declared them unconstitutional. The charter called for a reapportionment process culminating with a referendum. But there was insufficient time for a referendum before upcoming city elections. So the Dallas City Council had to exercise the legislative power that had been delegated to the City.

> It must be noted that since there is no provision under Texas law for reapportionment of Home Rule cities such as Dallas by the state legislature, or other state agency, acceptance of respondents' position would leave Dallas utterly powerless to reapportion itself in those instances where the time remaining before the next scheduled election is too brief to permit the approval of a new plan by referendum.

437 US at 544-45 n.8 (emphasis added).

The significance of home rule is that it answers the question of who exercises the "residuum of power" when an apportionment plan is struck down. If the

Appellants' contention were upheld, it would gut the legislative authority requirement insisted on by a majority of the Justices in Wise. If Appellants' argument were accepted, it would mean that federal courts would have created in the Escambia County Commission a legislative power that otherwise would be reserved by the Florida Constitution to the legislature, except in those instances where counties adopt home rule charters.

Unlike the City of Dallas, Escambia County, having repudiated a home rule charter in a referendum election, does not have legislative power to reapportion itself. The Constitution of Florida strictly prohibits any form of election for non-home rule counties other than the at-large system. Fla. Const., Art VIII, §1(e) (1968) provides

> Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contigous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected by the electors of the county.

Despite the clear command of §1(e) that counties must elect their commissioners at-large, the Appellants argue that §1(f) gives Escamba County the power to adopt a plan other than the at-large plan required by the Constitution of Florida. Yet §1(f) allows county governments only to enact "county ordinances not inconsistent with general or special law." The Appellants apparently do not consider the Florida Constitution to be a general

law. The argument of Appellants is a plainly erroneous interpretation of the Florida Constitution. See also, Ervin v Richardson, 70 So2d 585 (Fla. 1954).[8]

Pursuant to the broad home rule authority set out in F.S.A. 125.60-125.88 (Supp. 1979), at least two Florida counties have chosen to elect some of their county commissioners from single-member districts. But Escambia County's voters have rejected charter government proposals twice in the last six years. Consequently, the power to change the method of electing Escambia County Commissioners remains with the state government.

The courts below have both interpreted the Florida Constitution in the same way -- contrary to the Appellants' argument. The Court should apply to this concurrent interpretation of state law the same presumption that applies to factual issues: the Supreme Court "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." Graver Mfg. Co. v Linde Co., 336 US 271, 275 (1949); see also, Rogers v Lodge, ___US___, 73 LEd2d 1012, 1021 (1982), City of Mobile v Bolden, 446 US 55 (1980).

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8. The state constitution does grant counties operating under home rule charters "all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors." Fla. Const., Art VIII, §1(g) (1968).

Conclusion

For the reasons set out above this court should affirm the judgments below or dismiss the appeal.

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Office-Supreme Court, U.S.
FILED
MAR 21 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1295

IN THE

Supreme Court of the United States

October Term, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

Appellants Escambia County, Florida ("Escambia") and the members of the Escambia Board of County Commissioners ("County Commission"), through counsel, submit this Opposition to the Motion to Affirm or Dismiss ("Motion") filed by appellees in the above-captioned matter.

ARGUMENT

I. The Clearly Erroneous Standard Does Not Insulate the District Court's Findings from Appellate Review.

Appellees' arguments in support of their contention that the district court's finding of vote dilution under the fourteenth amendment must be affirmed as not clearly erroneous reflect a fundamental misunderstanding of the clearly erroneous standard of Fed.R.Civ.P. 52(a). Contrary to the assumption of ap-

pellees, that standard does not insulate a trial court's findings of fact from appellate review. While the findings of fact of the trial court are entitled to deference, they must be set aside as clearly erroneous if, "although there is evidence to support . . . [them], the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."[1]

In their Jurisdictional Statement (or "J.S."), at 22-26, appellants showed that the record fails to support either the district court's finding of discriminatory intent or its subsidiary findings. In contrast, appellees' motion contains not one reference to the record in this case. Instead, appellees simply reiterate the district court's findings. For the most part, appellants do not contend that the district court did not make the findings appellees claim it made. Appellants, however, do contend that the record shows an absence of discriminatory intent behind the establishment and maintenance of the at-large system of electing Escambia's County Commissioners.

The Fifth Circuit also seems to have suffered from the same misunderstanding of the clearly erroneous standard as appellees. In its initial decision, *McMillan v. Escambia County, Florida* (*"McMillan I"*),[2] the Fifth Circuit correctly articulated the standard this Court adopted in *Rogers v. Lodge*[3]:

> Fortunately, the district court below correctly anticipated that the *Arlington Heights* requirement of purposeful discrimination must be met, and thus made explicit findings concerning intent in addition to and apart from its *Zimmer* findings. Accordingly, there is no need to remand the case for a determina-

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[1]United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948); *accord, e.g.*, Kelley v. Southern Pacific Co., 419 U.S. 318, 322-23 (1974); Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 123 (1969).

[2]638 F.2d 1239 (5th Cir. 1981) (J.S. at 30a).

[3]___U.S. ___, 102 S.Ct. 3272 (1982). *See* Jurisdictional Statement at 18-20.

tion of whether purposeful discrimination exists.[4]

Applying this standard, the court reviewed the entire record "and found no evidence of racial motivation by the county commissioners in retaining the at-large system."[5]

In its decision on rehearing, *McMillan v. Escambia County, Florida* (*"McMillan III"*),[6] the Fifth Circuit, like appellees,

[4]*McMillan I,* 638 F.2d at 1243-44 (J.S. at 39a-40a); *compare with Rogers,* 102 S.Ct. at 3278

> (The District Court . . . demonstrated its understanding of the controlling standard by observing that a determination of discriminatory intent is 'a requisite to a finding of unconstitutional vote dilution' under the Fourteenth and Fifteenth Amendments . . . . Furthermore, while recognizing that the evidentiary factors identified in *Zimmer* were to be considered, the District Court was aware that it was 'not limited in its determination only to the *Zimmer* factors' but could consider other relevant factors as well.).

[5]*McMillan I,* 638 F.2d at 1245 (J.S. at 42a). In discussing this aspect of the decision, appellees argue that the Fifth Circuit's rejection of the district court's inference of discriminatory intent from the Commissioners' expression of desire to retain their incumbency was based on a misunderstanding of the district court's reasoning. Motion at 6. Appellees contend that "the District Court had not grounded its finding of racial intent on the commissioners' 'motive to exclude *all* other potential candidates, as the Court of Appeals thought . . . but on their motive to exclude black potential candidates specifically.' " *Id.*

The Fifth Circuit did not misunderstand the district court but, correctly, disagreed with the inference the court drew. The district court had inferred that, under a single-member district election system, the possibility existed of "one or more of... [the Commissioners] being displaced in subsequent elections by blacks." McMillan v. Escambia County, Florida, PCA No. 77-0432, typescript op. at 31 (N.D.Fla. July 10, 1978) (J.S. at 98a). However, even assuming, arguendo, that the desire to retain one's incumbency could be translated into discriminatory intent, that would not explain the Commissioners' unanimous preference for the at-large system. Assuming blacks vote as a bloc, the imposition of a single-member district system under the facts of this case would result in only one of the commissioners being displaced by a black. Certainly, commissioners residing in the non-black districts would not be concerned about being replaced by blacks.

[6]688 F.2d 960 (5th Cir. 1982) (J.S. at 1a).

simply reiterated the district court's findings. Even though the applicable legal standard had not changed and no new evidence had been introduced, the court vacated the portion of its decision in *McMillan I* concerning the County Commission and upheld the district court's finding of discriminatory intent. These actions are explainable only on the grounds that the Fifth Circuit incorrectly interpreted the clearly erroneous standard as precluding it from disturbing the district court's findings.

This Court's decision in *Rogers* leaves no doubt that the validity of an at-large election system under the fourteenth amendment depends upon the determination of whether that system was created or is maintained for a discriminatory purpose, and that that determination is a purely factual matter.[7] Suits challenging election systems have potentially far reaching consequences for the legislative body against which suit is brought as well as the persons governed by that legislative body. In view of the enormous impact a successful challenge to an election system is likely to have, the findings of the trial court must not be allowed to stand without careful review by an appellate court. Such review is lacking in this case and now must be undertaken by this Court to correct the clearly erroneous findings of the district court.[8]

II. The Result Appellants Have Urged Is Not Changed by the 1982 Amendments to Section 2 of the Voting Rights Act of 1965.

Appellees next contend that amended section 2 of the Voting

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[7]102 S.Ct. at 3276-79.

[8]Appellees claim that the evidence in this case of discriminatory intent is more "overwhelming" than the evidence in *Rogers*. Motion at 3. This contention is refuted even by the district court: "The conclusion impelled and reached is that at least the preponderance – *though not an overwhelming preponderance* – of the evidence supports plaintiffs' contentions . . . ." McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 35 (N.D. Fla. July 10, 1978) (emphasis added) (J.S. at 103a).

Rights Act of 1965[9] immediately became applicable to this suit and affords an alternative ground for affirmance of the Fifth Circuit's decision in *McMillan III*.[10] Appellees, however, overlook the fact that this was precisely the situation which confronted this Court in *Rogers*. Plaintiffs in *Rogers* had alleged a violation of section 2,[11] and amended section 2 was in effect prior to this Court's decision. This Court repeatedly has held that, when possible, a suit must be resolved on statutory, rather than constitutional, grounds.[12] Nevertheless, the Court based its decision in *Rogers* exclusively on the fourteenth amendment. The allegations of the plaintiffs in *Rogers* were identical to the allegations of appellees herein. Accordingly, the reasons which led the Court not to decide *Rogers* under amended section 2 are equally applicable to the instant suit.

Even assuming, arguendo, that amended section 2 is applicable to appellees' claims and allows a private right of action,[13] appellees still would not prevail. As appellees point out,[14] the intent of Congress in amending section 2 was to allow a violation of section 2 to be established by a showing of discriminatory result and to obviate the need to prove discriminatory intent.[15] That section, however, specifical-

[9]42 U.S.C. § 1973 (1976), *as amended by* Voting Rights Act Amendments of 1982, Pub.L.No. 97-205, § 3, 96 Stat. 131, 134 (1982).

[10]Motion at 8, 9 n.6.

[11]*See* Lodge v. Buxton, 639 F.2d 1358, 1360 (5th Cir. 1981), *aff'd sub nom. Rogers*.

[12]*E.g.*, United States v. Clark, 445 U.S. 23, 27 (1980); Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101, 105 (1944).

[13]*See* City of Mobile, Ala. v. Bolden, 446 U.S. 55, 60 (1980).

[14]Motion at 10.

[15]S.Rep.No. 417, 97th Cong., 2d Sess. 27-28.

Appellees' reliance on the portion of the legislative history which refers to this suit, Motion at 9-10, is, at best, questionable because, as the hearings on the 1982 amendments show, counsel for appellees were largely responsible for the portion of the legislative history appellees quote, *see* Extension of the Voting Rights Act: Hearings on

ly provides that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion of the population." In their Jurisdictional Statement, at 22-26, appellants showed that the factors which, if proven, could satisfy the results test are absent in this case, that the district court's findings to the contrary are clearly erroneous and that all appellees have proven is that blacks have not been elected to the County Commission in proportion to their percentage of the population. Under these circumstances, amended section 2 affords appellees no relief.

III. The Decisions of this Court and Controlling Florida Law Establish that the Courts Below Erred in Disregarding the Remedial Election System the County Commission Submitted and, Instead, Ordering the Implementation of a Court-Ordered System.

Finally, appellees argue that, following the decision striking down the at-large system, *Wise v. Lipscomb*[16] and Florida law prohibit the County Commission from adopting a remedial election system for consideration as a "legislative plan."[17] There is a variety of flaws in the arguments appellees have advanced.

H.R. 3112 Before the Subcomm. on Civil and Constitutional Rights, Comm. on the Judiciary, 97th Cong., 1st Sess. 418-40, 2029-65 (testimonies of Jack Greenberg and James U. Blacksher).

[16]437 U.S. 535 (1978).

[17]Motion at 12-15. In their Motion, at 12 n. 7, appellees suggest that this appeal may not be ripe for review because, on remand, the district court was reconsidering "the exact configuration" of the five single-member district election system the court had ordered in 1979. Even if appellees' argument had some merit, it no longer does because the court now has ordered into effect the same five single-member district election system it ordered in 1979. McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D.Fla. Mar. 11, 1983) (Order). The Court ordered this system to be implemented because it concluded that none of the exceptions to the "law of the case" doctrine was applicable, and that, therefore, that doctrine required it to carry out the Fifth Circuit's

Firstly, appellees contend that, if appellants' arguments were accepted, the County Commission would become possessed with a "legislative power" it does not possess because that power is "reserved by the Florida Constitution to the legislature, except in those instances where counties adopt home rule charters."[18] Appellees' contention is wrong. Article III, section 11(a)(1) of the Florida Constitution expressly prohibits the Florida

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mandate. McMillan v. Escambia County, Fla., PCA No. 77-0432 typescript op. at 11 (N.D.Fla. Mar. 11, 1983) (Memorandum Decision).

Although the court's decision essentially was based on the "law of the case" doctrine, the court considered the merits of the election system the County Commission proposed following a hearing concerning the remedy on February 9, 1983, at which the court suggested that the County Commission submit a remedy for consideration as a "legislative plan." That system provided for five commissioners to be elected from single-member districts and two commissioners to be elected at-large. The Court indicated its disapproval of such a system because, even with one district gerrymandered to provide a majority of black registered voters, the system would not allow blacks the opportunity to elect commissioners in proportion to their percentage of the population. *Id.* at 13. Previously, in McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D. Fla. Sept. 24, 1979) (J.S. at 66a), the court had criticized an election system the County Commission had proposed similar to the above-described system also on the grounds that it failed to afford blacks the opportunity for proportional representation. *Id.* at 3.

When this suit was filed, blacks were approximately 19.7% of the population and 17% of the registered voters. *See* Jurisdictional Statement at 3-5. At present, blacks are approximately 19.7% of the population and 15% of the registered voters. *See* McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 12 n.3 (N.D. Fla. Mar. 11, 1983). The conclusion appellants have drawn from the court's decisions is that, regardless of whether the County Commission should have been allowed to submit a "legislative plan," the court would not have implemented any election system which did not assure blacks of more than proportional representation. Such a basis for rejecting a "legislative plan" is, of course, improper. *See* White v. Regester, 412 U.S. 755, 765-66 (1973); Whitcomb v. Chavis, 403 U.S. 124, 149-50 (1971).

[18]Motion at 13-14.

Legislature from enacting laws concerning elections in individual counties: "There shall be no special law or general law of local application pertaining to: (1) election. . . ." Therefore, under Justice White's analysis in *Wise*, the Legislature could not submit a remedial election system for consideration as a "legislative plan." Florida law, however, provides non-charter county commissions with broad powers with respect to matters of local concern. In addition to the provisions of Florida law discussed in the Jurisdictional Statement, at 26-29, Fla. Stat. § 125.01(3)(b) (1981) provides: "The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution." Section 125.01 (1981 & Supp. 1982) is fully applicable to non-charter counties[19] and, when juxtaposed with Fla. Const. art. III, § 11(a)(1), leaves no doubt that the "residuum of power" to which appellees refer[20] resides with the County Commission and not the Florida Legislature.

Secondly, appellees assert that this Court should apply the clearly erroneous standard of Fed.R.Civ.P.52(a) to the lower courts' interpretation of Florida law. Appellees' unsupported assertion is directly contrary to limitations this Court has recognized on that standard: "The [clearly erroneous] rule does not apply to conclusions of law."[21] Additionally, the lower courts' interpretation of Florida law is clearly erroneous. As discussed in the Jurisdictional Statement, at 28-29, the Florida Supreme Court has held that Florida law provides non-charter counties with expansive, rather than restrictive, powers. As also discussed in the Jurisdictional Statement, at 29 n. 123, the Florida Supreme Court's interpretation of Florida law is controlling and binding on federal courts. Hence, the interpretation

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[19]Speer v. Olson, 367 So.2d 207, 210-11 (Fla. 1978).

[20]Motion at 13.

[21]Pullman-Standard v. Swint, ___ U.S. ___, ___, 102 S.Ct. 1781, 1789 (1982).

of Florida law by the Fifth Circuit and the district court, which is in direct contravention of the interpretation by Florida's Supreme Court, may not stand.

Lastly, appellees' arguments concerning the remedy are based entirely on the assumption that the courts below were correct in adopting Justice White's analysis in *Wise*. In their Jurisdictional Statement, at 29 n. 124, appellees noted that, irrespective of the County Commission's power under state law to adopt a remedial election system, a different result would have obtained if the courts below had adopted Justice Powell's analysis in *Wise*. Indeed, the Fifth Circuit also recognized this: "In this case, . . . we are presented with a fact situation that under Justice White's analysis points to a court-imposed plan, but under Justice Powell's analysis would be considered a legislative plan."[22]

In *McDaniel v. Sanchez*,[23] the issue before the Court turned on whether the reapportionment plan the district court approved was a court-ordered plan or a "legislative plan." The reasoning which led to the Court's conclusion that the reapportionment plan was a "legislative plan" leaves no doubt that the Court adopted Justice Powell's analysis:

> The application of the statute [§ 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1976)] also is not dependent upon any showing that the Commissioners Court had authority under state law to enact the apportionment plan at issue in this case. As Justice Powell pointed out in *Wise v. Lipscomb, supra, the essential characteristic of a legislative plan is the exercise of legislative judgment.*[24]

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[22] *McMillan III*, 688 F.2d at 972 n. 25 (J.S. at 28a).

[23] 452 U.S. 130 (1981).

[24] *Id.* (footnote omitted) (emphasis added). In its Memorandum Decision on remand, the district court agreed that, in *McDaniel*, this Court adopted Justice Powell's analysis, and further recognized that it and the Fifth Circuit were wrong in concluding differently. McMillan v. Escambia County, Florida, PCA No. 77-0432, typescript op. at 7-8,

Accordingly, regardless of the County Commission's power under state law, the courts below should have considered the County Commission's proposed remedy as a "legislative plan" and accorded it the deference to which "legislative plans" are entitled. By disregarding the County Commission's "legislative plan," the courts below have deprived the County Commission of performing what this Court has recognized is a legislative task.[25] This Court must not sanction such an unwarranted intrusion into the legislative process by the federal courts.

CONCLUSION

For the foregoing reasons, appellees' Motion to Affirm or Dismiss should be denied.

Respectfully submitted,

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11 (N.D. Fla. Mar. 11, 1983). Nevertheless, as discussed *supra* at 7 n. 17, the district court refused to alter the remedy.

[25] *See, E.g. Wise*, 437 U.S. at 540, 550.

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MOTION FOR LEAVE TO FILE AND BRIEF OF AMICI CURIAE STATE ASSOCIATION OF COUNTY COMMISSIONERS OF FLORIDA, INC. AND THE UNDERSIGNED NON-CHARTER COUNTIES OF THE STATE OF FLORIDA IN SUPPORT OF APPEAL

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Pursuant to Rules 36.1, .4 of the Rules of this Court, the State Association of County Commissioners of Florida, Inc. ("SACC") and the undersigned, non-charter counties of the State of Florida, through counsel, respectfully request leave to file the accompanying amici curiae brief in support of the appeal of appellants Escambia County, Florida ("Escambia") and the members of the Escambia

Board of County Commissioners ("County Commission") in the above-captioned action.

The SACC is a non-profit, charter organization comprised of county commissioners which represents the interests of county commissions and county commissioners. Amici curiae non-charter Florida counties are governed by the same state constitutional and statutory provisions which heretofore have governed Escambia, also a non-charter county. Amici curiae, therefore, have an interest in, and are impacted directly by, the Fifth Circuit's decision (1) invalidating, as applied to elections to the County Commission, Florida's constitutional requirement of at-large elections and (2) interpreting the state constitutional and statutory provisions which provide powers to non-charter county commissions, *McMillan v. Escambia County, Florida,* 688 F.2d 960 (5th Cir. 1982).

This is primarily a vote dilution case under the fourteenth amendment to the United States Constitution.

When sworn into office, all Florida county commissioners take an oath to uphold the Florida Constitution and statutes. The undersigned amici curiae firmly believe in the equality of all voters without regard to race, color or creed, and urge the Court that the state constitutional provision requiring at-large elections are not violative of the fourteenth amendment to the United States Constitution.

Under the decisions of this Court cited in the accompanying brief, the specific facts of a case determine the constitutional question whether the political process in issue unconstitutionally dilutes particular voters' votes. The Fifth Circuit did not heed this Court's decisions, and, instead, viewed the decision in *Rogers v. Lodge,* ____ U.S. ____, 102 S.Ct. 3272 (1982), as controlling the outcome of the instant suit, irrespective of the difference in facts and

state constitutional and statutory laws between Burke County, Georgia and Escambia. For example, on the vital issue of discriminatory intent, unlike *Rogers,* appellants herein presented direct, personal testimony of the absence of such intent, and appellees offered no evidence to rebut this testimony.

Significant to this Court's evaluation of the vote dilution claims in *Rogers* was its view of Georgia law and the quality of life, as manifested by the existing socio-economic conditions in Burke County. These factors, therefore, are important to this case, and, in compliance with Rule 36.3, the undersigned amici curiae will supply new facts and argument in support of appellants.

In addition to the vote dilution aspect of this case, the Fifth Circuit's decision interprets Florida's Constitution and statutes in a manner which is directly contrary to the Florida Supreme Court's interpretation of those powers. Specifically, the Fifth Circuit held that the Florida Constitution limits the powers of non-charter county commissions to those powers expressly authorized by statute, and that, therefore, following a decision invalidating an at-large election system, these county commissions lack the power to adopt a remedial election system. This portion of the Fifth Circuit's decision was not dependent at all on the facts surrounding elections to the County Commission, and, as a result, is applicable to all non-charter county commissions throughout Florida. Again, amici curiae are vitally concerned with the impact the Fifth Circuit's decision is likely to have, and have provided additional facts and argument in support of appellants' position.

If allowed to stand, the Fifth Circuit's decision will affect vote dilution cases not only in Florida but throughout the entire United States.

This brief is sponsored under Rule 36.4 of the Rules of this Court by the undersigned authorized law officers of the named county, political subdivisions of Florida which have signed and desire to appear as amici curiae in support of appellants.

All counsel for appellees refused a request for their consent to the filing of the accompanying amici curiae brief; counsel for appellants consented to the filing of the brief. A copy of the refusals and the consent has been filed with the Clerk of this Court.

For the foregoing reasons, amici curiae request leave to file the accompanying amici curiae brief in support of appellants' appeal.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1982

No. 82-1295

ESCAMBIA COUNTY, FLORIDA, *et al.*,

Appellants,

v.

HENRY T. McMILLAN, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF AMICI CURIAE STATE ASSOCIATION OF COUNTY COMMISSIONERS OF FLORIDA, INC. AND THE UNDERSIGNED NON-CHARTER COUNTIES OF THE STATE OF FLORIDA IN SUPPORT OF APPEAL

Amici curiae State Association of County Commissioners of Florida, Inc. and the undersigned, non-charter counties of the State of Florida, through counsel, submit this amici curiae brief in support of the appeal of appellants Escambia County, Florida ("Escambia") and the members of the Escambia Board of County Commissioners ("County Commission") in the above-captioned action.

STATEMENT OF INTEREST OF AMICI CURIAE

The interests of amici curiae are set forth in the preceding motion for leave to file this brief at i.

SUMMARY OF ARGUMENT

This case involves the equality of votes which must be accorded voters in Escambia under the fourteenth amendment to the United States Constitution and the power of a federal court to impose a court-ordered remedial election system in lieu of allowing a county commission opportunity to adopt such a system, where Florida's Constitution and statutes grant county commissions broad powers and do not prohibit them from adopting remedial election systems.

In *McMillan v. Escambia County, Florida,* 688 F.2d 960 (5th Cir. 1982), the Fifth Circuit affirmed a district court decision holding unconstitutional Florida's constitutional requirement of at-large elections of Escambia's county commissioners.[1] The Fifth Circuit based its affirmance on this Court's decision in *Rogers v. Lodge,* ____U.S. ____, 102 S.Ct. 3272 (1982). However, the court failed to recognize the tremendous difference in facts between this case and *Rogers.* The first part of this brief compares Escambia and Burke County, Georgia ("Burke"), the county which was sued in *Rogers,* and discusses how the Fifth Circuit's failure to account for the differences between Escambia and Burke led to its erroneous decision.

---

[1]The provisions of the Florida Constitution and statutes which are in issue are reprinted in Appendix E to appellants' Jurisdictional Statement at 123a – 129a.

The second part of this brief shows why the remedy the Fifth Circuit affirmed was erroneous. That court concluded that the powers of non-charter county commissions are limited to those specifically authorized by state law, and that, therefore, the County Commission lacked the power to adopt a remedial election system. This view of the powers of non-charter commissions is entirely incorrect. Non-charter county commissions have broad home rule powers which allow them to act unless the Florida Legislature has preempted the subject of the proposed action. Because the Florida Legislature has not preempted the area, non-charter county commissions, under the circumstances of this case, may enact remedial election systems.

ARGUMENT

I. FACTUAL COMPARISON OF BURKE COUNTY, GEORGIA AND ESCAMBIA COUNTY, FLORIDA.

A. The Ingredients of Discriminatory Intent Under the Fourteenth Amendment.

The facts of Burke present a picture of "old" South segregation while those of Escambia present a picture of an area which has grown out of that situation. Having come so far toward equality of treatment of all residents, Escambia is not covered by the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (1976), *as amended by* Pub. L. No. 97-205, 96 Stat. 131) and equality is the rule rather than the exception in the life of Escambia's citizens today. The profile of Burke painted in *Rogers* stands in sharp contrast to that of suburbanized, urbanized Escambia with its modern, county manager government.

It is the position of amici curiae that it is unfair in effect to judge Escambia on the Burke record as the Fifth Circuit did in vacating the opinion and decision it announced in *McMillan v. Escambia County, Florida*, 638 F.2d 1239 (5th Cir. 1981) and substituting the decision appealed herein, *McMillan v. Escambia County, Florida*, 688 F.2d 960 (5th Cir. 1982).

Amici curiae adopt the facts and law stated in appellants' Jurisdictional Statement with the additions stated herein. These additions are believed to require consideration by this Court because the district court relied so much on the constantly referred to "aggregate" of ancient history and past conditions rather than current facts. Finally, in its intermesh of discussion of the Pensacola City Council, the Escambia School Board and the County Commission, the district court concluded that, even in its "aggregate" approach, the preponderance of evidence was not "overwhelmingly" favorable to appellees as clearly was the case in *Rogers*.

The district court in this case concluded:

> Because this county and this city have made so much progress in complying with the commands of the Constitution and the law in recent years, this case is not an easy one to decide.
>
> The conclusion impelled and reached is that at least the preponderance — though not an overwhelming preponderance — of the evidence supports Plaintiffs' contentions so that judgment must be entered for them.

McMillan v. Escambia County, Florida, PCA No. 77-0432, typescript op. at 35 (N.D. Fla. July 10, 1978) (Memorandum Decision). The district court's conclusion in *McMillan* is to be compared with this Court's observa-

tion in *Rogers:* "The Court of Appeals also held that the District Court's findings not only were not clearly erroneous, but its conclusion that the at-large system was maintained for invidious purposes was 'virtually mandated by the overwhelming proof.' " 102 S.Ct. at 3275.

Assuming arguendo the discriminatory intent required to be proved in this fourteenth amendment vote dilution case is the intent of officials of Escambia, it seems to amici curiae that prior decisions of this Court require reversal of the decision of the Fifth Circuit because Escambia's County Commissioners denied any such intent and appellees offered no evidence to rebut this direct testimony. *See Moore v. Chesapeake and Ohio Railway,* 340 U.S. 573 (1951). In its initial opinion in this case, the Fifth Circuit "reviewed the testimony . . . and found no evidence of racial motivation by the County Commissioners in retaining the at-large system." *McMillan v. Escambia County, Florida,* 638 F.2d at 1245 (5th Cir. 1981). No new evidence was presented in the motion for rehearing, and the Fifth Circuit in its opinion on rehearing did not weigh this finding along with the many additional facts in the findings of the district court which demonstrate that the Fifth Circuit's first opinion was correct. The second opinion, which is based largely on inferences and circumstantial matters from selected parts of the record and ancient history, misconstrues the principles of *Rogers* as applied to the facts and law applicable to Escambia in this case.

The district court's findings have been addressed by appellants but amici curiae wish to refer to and to emphasize the Commissioners' testimony that they rejected the single-member district proposals for good government reasons and acted to uphold their oath of office to support the Florida Constitution's requirement of at-large elections

and not to dilute the vote of any citizen of Escambia—Transcript at 1478, 1501, 1517-18, 1558-59 (testimonies of Commissioners Beck, Kelson, Deese and Kenney respectively). The district court cited the present equality of access to the election process and the absence of slating organizations, inaccurately found racially polarized voting and that such voting was "rendering an otherwise neutral electoral system constitutionally infirm," *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 157 (1977), praised the responsiveness of the Commissioners to the needs of blacks, cited the Commissioners' efforts in affirmative action programs "in employment and public recreation as impressive," referred to the fact that "the Commissioners listen to and act upon requests and complaints of blacks," and recognized that "[t]here was no significant discrepancy shown between service to blacks and whites." *McMillan v. Escambia County, Florida*, PCA No. 77-0432, typescript op. at 10, 15 (N.D. Fla. July 10, 1978).

Amici curiae most respectfully urge that the *Rogers* inference rule should work both ways and that the concrete, proven facts and the inferences derived therefrom regarding good government ideas and intentions should be held to confirm and to support the County Commissioners' testimony to the fact that their actions on the proposals for single-member district elections were for good government purposes and were not taken for discriminatory reasons.

Escambia's form of commission government with commissioners' being elected at-large was created under the Florida Constitution for racially neutral, good government purposes to eliminate evils then existing in the ward electoral system. *See McGill v. Gadsden County Commission*, 535 F.2d 277, 280-81 (5th Cir. 1976).

The commission form of government first was created in Galveston, Texas in 1900. Within twenty years it had spread rapidly to approximately 500 cities and other local governments in the North as well as in the South. It is now employed by approximately 540 local governments across the Nation. Commission government is founded upon two fundamental principles. First, its structure is designed to foster corporate management-type efficiency of operation through the creation of clear lines of known public responsibility for specific aspects of the government's affairs. Woodruff, *City Government by Commission* 29 (1911). Second, every voter is a constituent of each commissioner, which alleviates the "ward-heeling" and "logrolling" that characterized the aldermanic or councilmanic systems in the early 1900's.[2] As one political scientist of the time stated:

> [U]nder the ward system of representation, the ward receives attention, not in proportion to its needs, but to the ability of its representatives to 'trade' and arrange 'deals' with fellow members. The pernicious system of logrolling results.
>
> 'To secure one more arc light in my ward, it was necessary to agree to vote for one more arc in each of the other seven wards;' said a former councilman, 'the City installed and paid for eight arc lamps when only one was needed! So with sewer extensions, street paving and grading and water mains.' Nearly every City under the alder-

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[2]Political scientists attribute the relative decline in adoption by governments of the commission form to the rise of council-manager government, founded upon the essentially same premises, which also depends upon at-large voting to assure that officials maintain a city-wide perspective. McCandless, *Urban Government and Politics* 168 (1970); *see also* City of Mobile, Ala. v. Bolden, 446 U.S. 55,65 (1980).

> manic system offers flagrant examples of the vicious method of 'part representation.' The Commission form changes this to representation of the City as a whole.

Bradford, *Commission Government in American Cities* 165 (1911).

A large majority of municipalities in the United States conduct elections at-large. *See City of Mobile, Alabama v. Bolden,* 446 U.S. 55, 60 n.7 (1980). Therefore, the belief by Escambia's County Commissioners that at-large elections provide the best form of good government is also the belief of a large majority of the residents of municipalities in the United States. That there are continuing fears that a ward or district system will return the County Commission to the same evils also supports the view of the Commissioners that the at-large system is the best form of government for Escambia. *See* Appendix A.

Assuming discriminatory intent could be the overall intent of the people of the whole county such as was shown by the example of the segregated laundrymat owner in Burke (Jurisdictional Statement at 77a, 94a, *Rogers*) and the anti-black prejudice which pervades that County according to the record as reported in this Court's *Rogers* opinion, then the overall treatment of blacks by the people of Escambia and the quality of life its socio-economy offers its residents must be considered in establishing the constitutional law on intent in this case. Hence, amici curiae present in this brief the socio-economic facts giving the overall picture of "life" in Escambia, entitled "Community Profile 1981-82," Appendix B, and the "Economic Profile of Burke County, Georgia," Appendix C.[3]

[3]That these are not equal profiles and few new references are given to facts describing Burke County beyond those referred to in *Rogers* is due either to their non-existence or to amici curiae's inability, after

This Court in *Rogers* quoted with approval a statement by the Fifth Circuit in *Nevett v. Sides*, 571 F.2d 209 (5th Cir. 1978): "'The task before the fact finder is to determine whether under all the relevant facts, in whose favor the 'aggregate' of the evidence preponderates, this determination is peculiarly dependent upon the facts of each case.'" 102 S.Ct. at 3278 (quoting *Nevett*, 571 F.2d at 224). This statement has led amici curiae to present not only Appendices B and C but also the following comparison between the highlights of the major facts which appeared to impact this Court's opinion in *Rogers* and the facts concerning Escambia.

B. **Population Trends and Area.**

The downtrodden, poverty ridden, predominately agricultural picture of Burke is set forth by this Court in its opinion in *Rogers*. 102 S.Ct. at 3279-80. Small wonder that the Court cited as significant the drop in total population in Burke between 1930 and 1980, from 29,224 to 19,349, and the steadily diminishing percentage of blacks over the last 50 years. *Id.* at 3274 n.2.

In contrast, Escambia is a suburban and urban area which has grown from 53,394 in 1930 to 233,794 in 1980, Bureau of the Census, U.S. Dept. of Commerce, PC 80-1-B11, 1980 Census of Population – Florida 15 (1982). The largest city in Escambia is Pensacola with 57,619 residents in 1980. *Id.* at 35. The largest city in Burke, Waynesboro, had 5,790 residents in 1980. Bureau of the Census, U.S. Dept. of Commerce, PC80-1-A12, 1980

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great effort, to secure them. Because this Court has recently reviewed the record in *Rogers*, we will not repeat the detail given therein. Amici curiae has set forth the new facts which they obtained from the officials of the State of Georgia.

Census of Population – Georgia 12 (1982). Burke has 833 square miles of area, *Id.*, while Escambia has 661 square miles, Bureau of the Census, U.S. Dept. of Commerce, PC 80-1-A11, 1980 Census of Population – Florida 8 (1982).

C. Commerce and Industry: Socio-Economic Facts.

As noted in *Rogers*, Burke is a predominately agricultural area. 102 S.Ct. at 3274. Other information on Burke County confirming the facts set forth in *Rogers* is provided in Appendix C. Appendix B to this brief details the tremendous government, finance, business, port and industrial socio-economic activity in the Escambia community.

Amici curiae submit that the kind of socio-economic quality of life Escambia obviously offers its citizens does not show the poverty-depressed, segregated quality of life shown in the "aggregate" of the record in *Rogers* for blacks in Burke. As reflected in Appendix B, Escambia's socio-economic picture is outstanding, and blacks residing therein are not proven to lack the benefits thereof. This is a major distinction when considering how unfair it is to apply *Rogers* principles enunciated in the context of the facts of Burke, and Georgia as a whole, on discriminatory maintenance to the very different facts in Escambia.

As indicated in Appendix C, there are four banks now in Burke with total assets of $62,600,000 and one savings and loan institution with total assets of $321,900,000. Appendix B to this brief reports 12 banks in Escambia County with 35 locations and total deposits of $506,680,000 and debits of $1,984,659,800; savings and loan associations have 14 locations and deposits totaling $443,534,000.

There are also 28 credit unions with assets of $292,500,000.

The federal government, with 10,900 employees in Escambia,[4] and state and local governments, with 14,800 employees, are the largest employers in Escambia. Other employers and the number of their employees are listed in Appendix B along with many socio-economic facts not in the record herein but which amici curiae believe will be helpful in judging the "aggregate" evidence pertaining to the absence of discriminatory intent applicable to this appeal under the principles set forth in *Rogers* and *Bolden*.

D. Public and Official Treatment of Blacks.

Internal, hostile, racial discrimination in Burke, as disclosed by the record in *Rogers*, does not pervade in Escambia. There was evidence that blacks openly are called "niggers" in Burke County Commission meetings. Brief of Appellees at 14, *Rogers*. No such evidence is in the Escambia record. The "colored" and "white" signs on courthouse restroom doors and the "nigger hook" on the water fountain in the Burke courthouse, Jurisdictional Statement at 74a, 75a, 94a, *Rogers*, also are not present in Escambia. The intense public hostility toward blacks emphasized in *Rogers* does not exist in Escambia. No segregated laundrymat, *Id.* at 94a, 97a, or other segregated facility is referred to in the record in this case.

E. Educational Institutions.

In *Rogers*, this Court and the district court stressed the lack of educational facilities in Burke as a factor proving

[4]There is a total of over 24,000 military and civilian government personnel earning over 297 million in payroll annually. *See* Appendix B at 11a-12a.

discriminatory intent. 102 S.Ct. at 3280. No such facts appear in the *Escambia* record. As shown in Appendix C, Burke has the following educational institutions:

6 elementary schools
1 junior high school
2 high schools
no institutions of higher learning.

In contrast, Appendix B reveals that Escambia has the following educational institutions:

42 elementary schools
11 middle schools
8 high schools
21 private and parochial schools.

University of West Florida, enrollment 5,000
University of West Florida, graduate schools
Pensacola Junior College, enrollment 19,958
2 private 4-year colleges: Liberty Bible College and Pensacola Christian College.

Significantly, the record does not show that these facilities are not available equally to blacks and whites.

F. **Voting Processes.**

Until the *Rogers* case was filed, all voters in Burke had to register to vote at the County Courthouse. This had been made an almost shameful process for blacks. The district court found no such facts in Escambia. In fact, an intense county-wide registration program is undertaken before each election. *McMillan v. Escambia County, Florida*, PCA No. 77-0432, typescript op. at 10 (N.D. Fla. July 10, 1978). The fact that, according to the district court's findings, blacks are 17% of the registered voters and 19.7% of the population and that 66.9% of eligible

blacks have registered to vote as compared to 69.7% of eligible whites, *Id.*, demonstrates that there is no discrimination whatsoever in Escambia in this vital area.

II. Appellees Failed To Prove that the Escambia At-Large Election System Is Being Maintained for Discriminatory Purposes.

The denial by Escambia's County Commissioners that discriminatory considerations were the reason they favored retention of the at-large election system has been referred to at 5-6 *supra*. The Commissioners' many actions supporting this fact are replete throughout the record. In upholding the Commissioners' testimony as controlling on this issue, the Fifth Circuit recognized that "the desire to retain one's incumbency unaccompanied by other evidence ought not to be equated with an intent to discriminate against blacks *qua* blacks." *McMillan v. Escambia County, Florida*, 638 F.2d at 1245; *see also Rogers*, 102 S.Ct. at 3292 (Stevens, J. dissenting). In its opinion on rehearing, the Fifth Circuit noted that it was "not depart(ing) from our prior conclusion that desire to maintain incumbency does not equal discriminatory intent". *McMillan v. Escambia County, Florida*, 688 F.2d at 969 n.19.

This testimony by the Commissioners coupled with the favorable district court findings discussed above and the tremendous amount of evidence in the record showing the sensivity and responsiveness of the Commissioners to the needs of blacks certainly buttress the proof that the Commissioners harbored no intent to maintain the at-large election system for invidious or discriminatory purposes and warrant no inference to the contrary.

The district court's findings range over the acts of three governments, and it is not always easy to separate out

part relating solely to the County Commission. More than two-thirds of the record in this case is devoted to the Pensacola City Council and the Escambia School Board. No incidents of specific County Commission alleged discrimination are contained in the record other than its actions on the charter proposals referred to above. The district court's conclusion that the case was difficult to decide because the preponderance of the evidence was not "overwhelmingly" against the three sets of defendants in the jointly tried case must be weighed against the favorable findings the district court also made as to Escambia and the County Commission; and the references to past history do not have the same relevance or impact as present intent proven by acts done. The Fifth Circuit on rehearing would "in the manner of original sin," *Bolden*, 446 U.S. at 74 (1980) (plurality opinion), use old history the Commissioners did not make to condemn Commissioners who today obviously operate a governmental system to the equal benefit of blacks and whites.

In contrast to the evidence in *Rogers* as to Burke, the "aggregate" of proof in this case as to the County Commission shows conclusively that the at-large election system is not being maintained for discriminatory reasons. Accordingly, amici curiae respectfully urge that, under *Rogers*, the "aggregate" of facts in this case did not require the Fifth Circuit either to grant rehearing or to change its original opinion.

III. The Florida Constitution and Statutes Provide Non-Charter County Commissions the Power To Adopt Remedial Election Systems.

Based on its adoption of Justice White's analysis in *Wise v. Lipscomb*, 437 U.S. 535 (1978), the Fifth Circuit

addressed the issue of whether the County Commission has the power to adopt a remedial election system, and concluded that the Commission does not possess such power because the Florida Constitution expressly limits the legislative powers of county commissions to those specifically authorized by state law. *McMillan v. Escambia County, Florida,* 688 F.2d at 972. This interpretation of Florida law is the exact opposite of what Florida law actually provides.

In their Jurisdictional Statement, appellants established that, rather than limiting powers of non-charter county commissions, Fla. Const. art. VIII, § 1(f); Fla. Stat. § 125.01 (1981) provide these county commissions with broad home rule powers. Jurisdictional Statement at 26-29. In addition to the authorities cited by appellants, additional authorities confirm appellants' construction of Florida law.

For example, commenting on the 1968 amendments to Florida's Constitution, one commentator wrote that "[t]he 1968 revision of the Florida Constitution embodied the most fundamental change in the relationship of the state and local governments in the state's history." Sparkman, *The History and Statutes of Local Government Powers in Florida,* 25 U. Fla. L.Rev. 271, 271 (1973). With respect to the home rule powers afforded by these changes to Florida's Constitution, this commentator also observed:

> These changes to article III [of the Florida Constitution], while not directly bearing on home rule powers, represent a significant narrowing of the scope of permissible general laws of local application . . . . Taken in conjunction with the new home rule provisions, they fit into an over all design to take local decisions out of the legislature and put them into the hands of

local officials who are in closest contact with the people affected.

A NEW CONSTITUTIONAL ARTICLE ON LOCAL GOVERNMENT

The heart of home rule in Florida is now found in subsections 1(f), 1(g), and 2(b) of article VIII. The subsections apply to non-charter counties, charter counties and municipalities respectively.

* * * *

No significant changes in the statutes were made in 1970, but the home rule thrust was continued in 1971 with the passage of a broad county home rule bill . . . . The intent was to clarify and expand the home rule powers of counties and to encourage counties to exercise them.

. . . Thus, chapter 71-14 [codified as amended at Fla. Stat. § 125.01 (1981 & Supp. 1982)] is significant as the first act of home rule implementing legislation to address itself to the elimination of preexisting detailed authorizing legislation, passed under earlier philosophies, that could be restrictive under the constitutional limitations on home rule. In addition, as in other home rule legislation, there is a specific direction that the act is to be liberally construed to secure the broad exercise of home rule powers.

Another significant point about the act is that it draws no distinction between charter and non-charter counties, evidencing a legislative intent to provide the fullest possible extent of home rule powers for all counties. The range and scope of the powers enumerated by the new law are so broad and comprehensive as to encompass all

> readily and imaginable local government concerns. The role of chapter 71-14 in the home rule scheme is such that it has been described as 'in fact and intent, a legislative charter for a non-charter county.'

Id. at 289-90, 297-98 (footnotes omitted).

Similarly, another commentator concluded: "The general thrust of the [1968] revision [to Florida's Constitution] is to increase local autonomy . . . . Implementing legislation has granted broad powers, both to charter and non-charter counties . . . ." Levinson, *Florida Constitutional Law*, 28 U. Fla. L.Rev. 551, 586-87 (1974) (footnote omitted).

More recently, Florida's Attorney General has expressed his concurrence in views of the above commentators and appellants. In response to a request for an opinion on certain powers of non-charter counties under Fla. Const. art VIII, § 1(f); Fla. Stat. § 125.01, the Attorney General advised:

> I am compelled to conclude that § 125.01, F.S., implements the provisions of Art. VIII, § 1(f), State Const., granting non-charter counties the full power to carry on county government. Thus, as the court stated in *Speer* [*v. Olson*, 367 So. 2d 207 (Fla. 1978)[5]], unless the Legislature has preempted a particular subject relating to county government by either general or special law, the governing body of a county, by reason of § 125.01, has the authority to act through the exercise of its home rule powers. To the extent that previous opinions of this office are to the contrary, they are hereby superseded and modified.

[5]The *Speer* case is discussed in the Jurisdictional Statement at 28-29.

Op. Att'y Gen. 081-48, 7-8 (1981).

The only conclusion to be drawn from the above, additional authorities confirms that non-charter counties have broad powers and may legislate in those areas which have not been preempted by the Florida Legislature. The Legislature has not sought to preclude non-charter county commissions from adopting remedial election systems under the circumstances of this case, and the courts below erred in holding to the contrary.

CONCLUSION

For the foregoing reasons, the issues presented by this case are of enormous importance to the majority of local governments throughout Florida and the entire Nation whose officials are elected at-large, and this Court should note probable jurisdiction.

Respectfully submitted,

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APPENDIX A

THE PENSACOLA NEWS

VIEWPOINT

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8A Wednesday, December 8, 1982

BACK TO THE OLD SYSTEM

NO MATTER what Pensacola City Council election plan is adopted by U.S. District Judge Winston Arnow, it's almost certain to be better than the one he will adopt for the Escambia County Commission.

For the city plan, however gerrymandered to work out three special "black" districts, at least incorporates a vestige of the idea that a governing body should represent the entire community, not each individual representing a single district.

The civil suit settlement between the city and the plaintiffs – who contended, victoriously, that the old at-large election system unconstitutionally diluted the black vote – provides there will be seven single-member district seats and three at-large seats.

The hope is that the three at-large seats, representing the whole community, can offset the kind of district-by-district trading that brought the ward system into disrepute in the first place.

Yet there seems to be no such hope insofar as the County Commission is concerned.

Though the county's case is still on appeal to the U.S. Supreme Court, the higher courts have told Arnow to proceed with the elections here on the basis that the at-large system is unconstitutional.

At least one commissioner seemed to be entertaining some hope that Judge Arnow would approve a county plan calling for an expanded commission with a couple of at-large commissioners.

The judge, in fact, tentatively approved such a plan two years ago — but only on the contingency that the county go to charter government.

But the charter government proposal did not pass.

The rationale for Arnow's position, as news stories had it at the time, is this:

The City Council working under a charter, has the authority to reapportion itself.

The County Commission, without a charter, does not.

Thus, under a U.S. Supreme Court ruling of 1979, Arnow was required to give "considerable weight" to the city's seven-three plan.

But, said the news stories, he had "no choice" but to go to a five-member single-district plan for Escambia County absent a county charter.

Which, unless the court has made another ruling while we weren't looking, seems to put paid to having *any* at-large commissioners.

And it's a shame.

The County Commission, everyone admits, was not designed to be discriminatory, however discriminatory its effects.

It was adopted so that people all over the county would have a hand in electing the five commissioners whose decisions affect them all – and, at that, this newspaper spent years persuading them to act accordingly.

It won't happen overnight, probably, but we can see the day not far down the road when "road-board politics" will once again become a familiar phrase.

APPENDIX B

ESCAMBIA COMMUNITY PROFILE 1981-82

This document is written, printed and published by the Pensacola Area Chamber of Commerce, Pensacola, Florida.

LOCATION: Pensacola, seat of Escambia County, is located in extreme northwest Florida. The City is strategically located along the Gu lf Intracoastal Waterway at 30° 28' latitude and 87° 11' longitude. Altitude ranges from sea level to 120 feet above sea level.

AREA: The Pensacola Standard Metropolitan Statistical Area (SMSA) consists of the two westernmost counties in the Florida Panhandle.

Escambia County	**657 square miles**
Santa Rosa County	**1,152 square miles**
City of Pensacola	**23.13 square miles**

There is an additional 64,000 acres of water area. Escambia County extends from the Gulf of Mexico to the Alabama-Florida border, a distance of approximately 50 miles.

HISTORY: Pensacola was founded by Don Tristan de Luna, Colonizer under King Phillip of Spain, on August 14, 1559, six years before the settlement of St. Augustine.

Two years after its founding the settlement was abandoned due to dissension among its inhabitants. One hundred and thirty-five years after its abandonment, the City was resettled by Spanish, and has continued to this day.

In 1718 Pensacola was captured by the French. Within two years the Spanish were again in control. Pensacola remained in the hands of the Spanish for many years until, as a result of a European agreement, it passed into the

hands of the British. In 1781, it was again returned to the control of the Spanish.

The cession of Florida to the United States occurred in 1821 with Andrew Jackson taking possession of the State of Florida in Pensacola. During the Civil War, Pensacola once again changed hands when the City was under control of the Confederate Government. At that time Union forces evacuated Fort San Carlos and Fort Barrancas in favor of the more defensible Fort Pickens on Santa Rosa Island. In 1862 the Confederate Government abandoned the City to the Union Forces and once again Pensacola flew the flag of the United States.

During more than four hundred years of its history the City of Pensacola changed hands 13 times, and the flags of five different nations have flown over its forts-thus, the name, **"City of Five Flags"**. This history of the city is celebrated during the month of May in a week long pageant known as the **"Fiesta of Five Flags"**.

POPULATION: The Pensacola SMSA ranks eighth in the State in population with Escambia County ranking 11th.

Year	**Pensacola SMSA**	**Pensacola**
1970	243,075	59,507
1980	289,782 (+19.2%)	57,619(−3.2%)

DECENNIAL CENSUS INFORMATION 1850-1980

Year	Escambia County	Santa Rosa County	City of Pensacola
1981*	239,391	57,205	57,934**
1980	233,794	55,988	57,619
1970	205,334	37,741	59,507
1960	173,829	29,547	56,752
1950	112,706	18,554	43,479
1940	74,667	16,085	37,449
1930	53,594	14,083	31,579
1920***	49,386	13,670	31,035
1910	38,029	14,897	22,982
1900	28,313	10,293	17,747
1890	20,188	7,961	11,750
1880	12,156	6,645	6,845
1870	7,817	3,312	3,347
1860	5,768	5,480	2,876
1850	4,351	2,883	2,164

*Bureau of Economic & Business Research, U. of F.
**City of Pensacola, Community Design Department
***1920 Census indicated that part of Santa Rosa County was taken to form new counties sometime between 1910 and 1920.

RACE & ETHNICITY: Escambia County racial distribution (1980): 77.7% white, 19.7% Black, 2.7% other.

AGE: Median, Escambia County, 25.5 male; 28.5 female.

INCOME: Escambia County 1979 per capita income $6,973, ranks 27th in State. 1981 median family income; $18,900. Percent change in per capita income from 1970-1979 was plus 124.28%. Percent change in median family income $976-1981 was plus 65.79%.

TOTAL WAGES: Pensacola SMSA, 1981 . . $1,253,420,608.

EMPLOYMENT: From the year ending December 1980 to the year ending December, 1981, total employment increased by 5.7% to 106,700. The civilian labor force increased to 113,500. Unemployment increased over the period by 11.5% to a total of 6,800 and the unemployment rate rose to 6.0% (source: Fla. Dept. of Labor & Employment Security, Division of Employment Security, Bureau of Research and Analysis).

WAGE RATES: Wage rate information is available upon request from the Florida State Employment Service, Post Office Box 1393, Pensacola, FL 32596 or at the Chamber.

MOTOR VEHICLE REGISTRATIONS:

Automobiles	137,853
Trucks	33,097
Others	34,396
TOTAL	205,346

UTILITIES: *Electric Power:* Northwest Florida is adequately served with electrical power provided by Gulf Power Company, a subsidiary of the Southern Company. They own 33 modern generating stations in Northwest Florida. Gulf Power Company. Post Office Box 1151, Pensacola, FL 32522, (904) 434-8111. Customer Facility Charge: $5; October-May 5.610¢ per kilowatt hour. June-September 6.169¢ per kilowatt hour. A deposit of $75 for new residents plus a connection fee of $10 is required. Deposits returned after two years. *Telephone Service:* Southern Bell Telephone Company, Post Office Box 1071, Pensacola FL 32595; New Residential Customers: If your name begins with A-L, (904) 436-1201; if your name begins with M-Z, (904) 434-1232. Private Residence Line: $10.25 per month plus tax. Two-party Residence Line: $7.90 per month, plus tax. Business installation charge $97.40 plus tax, for single line. Telephone deposits vary

depending on the number of long distance calls and the basic service charge. *Other Communications systems:* Gulf Coast Electronics, Inc., 3535 West Fairfield Drive, Pensacola, FL 32505, (904) 453-5134. Southland Systems, 40 North Palafox Street, Pensacola, FL 32501, (904) 434-3096. *Public Utilities:* The Escambia County Utility Authority, 9250 Hammon Avenue, Building 942, Pensacola FL 32504, (904) 476-0480 supplies sanitary sewers and water to the metropolitan area. A $25 deposit is required within city and outside city limits. *Sewage Rates:* City limits: $2.38 per 1,000 gallons of water. Outside city limits: $2.98 per 1,000 gallon of water. *Gas Service:* City of Pensacola, Energy Services of Pensacola, Post Office Box 12910, Pensacola, FL 32521, (904) 436-4111. $35 deposit and $5 connection fee required in advance.

CLIMATE: Pensacola is situated in a warm temperate zone, and its climate is typical of the region along the upper Gulf Coast. The winters are mild and the summer heat is tempered by the southerly prevailing winds from the Gulf of Mexico. The City averages 348 days of the year in which sunshine occurs. The average annual percentage of sunshine is 66%. Unusual weather phenomena such as hurricanes and tornadoes have occurred, but such phenomena are far less frequent or severe than in many other parts of the Southeast. Late summer and fall are the seasons of highest winds.

AVERAGE MONTHLY TEMPERATURES

Month	Average Temperature	Average Maximum	Average Minimum
January	53.5	62.3	44.6
February	56.1	65.2	46.9
March	61.0	70.2	51.8
April	67.9	76.5	59.3
May	75.5	84.0	66.9
June	81.1	89.3	72.8
July	81.7	89.2	74.1
August	81.5	89.2	73.8
September	78.2	85.9	70.5
October	70.4	79.6	61.1
November	59.5	69.3	49.7
December	54.3	77.0	45.3
Yearly Averages:	68.4	77.0	59.7

AGRIBUSINESS: 1981 total gross value $28,970,000. 82,500 acres, planted with soybeans, corn, wheat, oats, cotton, vegetables, fruits and nuts and sorghum yielded a gross value of $16,886,000. Gross value in livestock (beef, swine and dairy) was $5,209,000 in 1981. Ornamental horticulture and forestry yielded a gross value of $6,875,000.

MAJOR EMPLOYERS IN THE PENSACOLA METROPOLITAN AREA

Company	Product	Number of Employees
Federal Government		10,900
Local and State Government		14,800
Monsanto Textiles Company	Nylon	5,000
Baptist Hospital	Hospital	1,880
St. Regis	Paper Products	1,800
Sacred Heart Hospital	Hospital	1,560
West Florida Hospital	Hospital	1,545
Gulf Power Company	Electric Utilities	1,432
Southern Bell	Telephone Service	1,000
American Cyanamid	Acrylic Fiber	650
Armstrong World Industries	Acoustical Celling Tiles	650
Sears and Roebuck	Department Store	650
Westinghouse Electric Co.	Nuclear Reactor Components	640
Vanity Fair	Clothing Manufacturer	565
Gayfers	Department Store	500
Medical Center Clinic	Clinic	479
Air Products	Industrial Chemicals	470
Lewis Bear Co.	Wholesale Distributors	403
Pensacola News-Journal	Newspaper	306
University Hospital	Hospital	300
Instrument Control Services	Instrumentation	268
Reichhold Chemical	Chemicals	205

CONSTRUCTION: 1981 Permits issued for 1472 residential units totaling $58,074,349. 129 commercial permits issued totaling $22,107,428.

PLANNING AND ZONING: The City of Pensacola's Department of Community Design and Planning is responsible for maintaining and updating a comprehensive City Plan for Pensacola. The City does have zoning ordinances and subdivision regulations. The Escambia County Division of Community Development has the primary function of promoting orderly growth within the County. *Inspections:* City maintains and enforces up to date codes for building, electrical, plumbing and gas in-

stallations. The Standard Building Codes of the Southern Building Code Congress are applicable. County codes apply only to the area outside the city limits, and cover new construction, alterations and additions.

HOUSING: Total of 3947 properties available as of May 17, 1982 ranging from $30,000 - $101,000 plus. Properties include houses, duplexes, condominiums, townhouses and mobile homes. A list of Chamber member realtors is available upon request.

FINANCE: Escambia County has 12 commercial banks with 35 locations and total deposits of $506,690,000 (6/30/81) and debits totaling $1,984,659,800 (1/82). *Savings and Loan Associations:* Three savings and loan associations with 14 locations and deposits totaling $443,534,000. *Credit Unions:* 28 credit unions with assets totaling $292,600,000.

RETAIL TRADE: Total retail sales totaled $1,170,779,000 in 1980. Major shoping areas include: Cordova Mall (80 retail stores), University Mall (81 retail stores), Westwood Mall (23 establishments), Town and County Plaza (63 retail stores). Other shopping facilities include: Warrington Village, Fairfield Plaza, Ensley Square, Downtown Pensacola, and Ferry Pass Plaza.

MILITARY: Pensacola has a special advantage in the calibre and strength of its military bases. Known since 1914 as the **"Cradle of Naval Aviation,"** Pensacola is the home of the Naval Air Station, the Naval Air Rework Facility (NARF) and the USS Lexington. Other Navy installations in Pensacola include Saufley Field and Corry Station. Whiting Field is located in Milton, Florida, about 20 miles northeast of Pensacola. Over 24,000 military and civilian personnel earn payrolls in excess of $297 million

annually. Pensacola is especially proud to be the home of the famous Naval flight demonstration team **"The Blue Angels".**

Of special interest is the Naval Aviation Museum, which contains hundreds of artifacts, exhibits and stories of the history of flight. The museum is open 9 a.m. to 5 p.m. daily, no admission charge.

GOVERNMENT: *City:* The City of Pensacola has a Council-Manager form of government, with ten councilmen elected for two year terms. The City Manager is appointed by the Council, and the Mayor is elected by the Council. Pensacola's bond rating is A-Moody's with a $48.9 million budget. *County:* Escambia County has a five person Board of Commissioners elected for four year terms. The County Administrator is appointed by the Commission. The County's bond rating is also A-Moody's, with a $82.9 million budget. County-total taxable value - $2,682,602,290. City-estimated actual value $1,052,451,000.

TAXATION: Unemployment Compensation Rate: 2.7% on employee's first $6,000 earned (normally $162.00 per employee per year). Workmen's Compensation: Varies by job classification. Corporate Income Tax: State tax of 5% on Florida's portion of adjusted Federal income. Florida's portion is determined by a formula using three factors. State Income Tax: *THERE IS NO STATE PERSONAL INCOME TAX IN FLORIDA.* Pensacola City Taxes: 22.92 mills or $22.92 per $1,000 of assessed value. Real property is assessed at 100% of assessed value. Homestead Exemption is available to all resident property owners. Escambia County Taxes: 18.988 mills or $18.98 per $1,000 of assessed value. Sales and Use Tax: 5% of the total price on the retail sale or rental of tangible personal property; no sales tax on groceries or drugs.

LAW ENFORCEMENT: *Police Department:* The City of Pensacola Police Department employs 133 sworn personnel, 48 support staff for a total of 181; 76 vehicles and 1 boat.

Florida Highway Patrol: Pensacola is a subdistrict headquarters for the Florida Highway Patrol, employing 48 officers and 50 vehicles.

Florida Marine Patrol: Pensacola is location of District office 11, covering Escambia, Santa Rosa and Okaloosa Counties. They employ 18 personnel, are equipped with 13 boats, 2 airplanes and 1 helicopter.

Sheriff's Department: The Escambia County Sheriff is an elected official, whose office employs 220 law enforcement officers and 230 vehicles.

FIRE DEPARTMENT: The City of Pensacola Fire Department numbers 139 persons, with jurisdiction extending to all incorporated areas of Pensacola. The Department has 6 fire stations and 17 pieces of equipment. In Escambia County some 15 volunteer fire departments and more than 500 volunteer firefighters work within the County. Together they have more than 50 pieces of firefighting equipment and class five to ten rating.

TRANSPORTATION: *Air Service:* Civilian all weather airport: Airlines serving Pensacola - Air Florida, Continental, Eastern, Texas International. Commuter airlines serving Pensacola: Dolphin, Scheduled Skyways. Number of scheduled flights: Air Florida-in- 3 daily; out-3 daily. Continental-in-2 daily; out-2 daily. Eastern-in 9 daily; out-9 daily. Texas International-in 2 daily; out-2 daily. Dolphin-in-2 daily; out-2 daily. Scheduled Skyways-in-1 daily; out-1 daily. Longest Runway-7,000 feet. Distance Downtown: 4 miles. Jet Fuel Available: 100 Jet A. *Rail*

Service: Burlington Northern, (904) 432-6185. SCL/L&N, (904) 434-2783. Freight Service. *Bus Service:* Inter-city: Greyhound and Trailways. Local Bus Service: Escambia Transit System (ETS). ETS has a fleet of 27 busses serving an area of 91 square miles with a route system of 283 one way miles. Estimated passengers in 1981: 1,600,000. For information regarding routes and charter information, call ETS at (904) 436-9383.

PORT OF PENSACOLA: The port of Pensacola is among North America's oldest and includes major terminals located on the largest protected Bay in the south. Because of its strategic location at the extreme western tip of Florida on the Gulf of Mexico, Pensacola has several competitive advantages over other ports of the Upper Gulf Coast. The bay is approximately 12 1/2 miles wide. It may be entered from the Gulf day or night through dredged channel with a depth of 33 feet at mean low water and a minimum width of 500 feet. Santa Rosa Island lying between Pensacola Bay and Gulf forms a natural breakwater for the inner harbor. Natural depths in the bay range from 20 to 45 feet and, except at its mouth and alongside of docks, no maintenance is required. There are no bridges between the city port and open seas. The port is served by four steamship agencies, 6 freight forwarders, appropriate government agencies, chandlers, marine surveyors and the necessary facilities for modest ship or barge repair. Total tonnage passing through the port during fiscal year 1981 was 1,354,790 net tons. Net tons exported: 1,079,491; net tons imported: 275,299.

HIGHWAYS: Pensacola is served by four major federal highways providing easy access from the north, east and west. Interstate 10 is a transcontinental east-west superhighway stretching from Jacksonville to Los

Angeles. Supplementing 1-10 as a major east-west transcontinental artery is U.S. 90 (Old Spanish Trail). U.S. 90 runs from St. Augustine to San Diego. U.S. 98 (Gulf Coast Scenic Highway) is another east-west artery starting at West Palm Beach and running to Natchez, Mississippi. U.S. 29 is a direct route to the Northeast, which connects with 1-65 at the Northern entry to Escambia County. It originates in Pensacola and terminates in Washington, D.C. Interstate I-100 is a major spur off I-10 to downtown Pensacola and the beach areas.

HIGHWAY MILEAGE TO SELECTED CITIES

City:	Miles:	Driving Hours:
Atlanta, GA	368	7.3
Chicago, IL	800	16.0
Los Angeles, CA	2,102	42.0
Miami, FL	693	13.8
Mobile, AL	60	1.0
Montgomery, AL:	170	3.4
New Orleans, LA	200	4.0
New York, NY	1,289	25.7
Tallahassee, FL	200	4.0

MOTOR FREIGHT: Pensacola is served by 17 motor freight carriers and several contract and special commodity haulers. All of the common carriers maintain local freight terminals and all provide store-door delivery service.

EDUCATION: *University of West Florida*-enrollment, 5,000; Graduate Schools-University of West Florida. *Pensacola Junior College*-enrollment, 19,958 and 2 private four year colleges, Liberty Bible College and Pensacola

Christian College. *Elementary Schools*-42; *Middle Schools*-11; *High Schools*-8; 21 private and parochial schools; over 40 day care centers. All high schools in Escambia County are fully accredited by the Southern Association of Colleges and Secondary Schools. Teachers must meet State Certification requirements. There are 180 days in the school year, which normally begins the Monday before Labor Day and runs through the first week in June. For further information on the Escambia County School District, call (904) 432-6121.

1980-81 SAT Scores

Mean SAT Score Math		Mean SAT Score Verbal	
Escambia County	480	Escambia County	434
Florida	463	Florida	424
Nation	466	Nation	424

Library Systems: The West Florida Regional Library serves the Pensacola SMSA (Escambia and Santa Rosa Counties). The central plant is located in Pensacola at 200 West Gregory Street, with four branches. The system includes one bookmobile and one outreach van with estimated monthly circulation of 55,000. Total volumes, 301,432.

John C. Pace Library, University of West Florida, contains more than 400,000 volumes and 550,000 microfilms. The Library is a regional depository for publications of the U.S. government and the State of Florida.

Pensacola Junior College Library system encompasses the main campus, the Warrington Campus and PJC Milton Center with 114,000 volumes and 8,000 audio-visuals.

HEALTH CARE: Seven hospitals, including a U.S. navy regional medical facility, are located in the Pensacola area, providing approximately 1900 beds. The number of beds per 1,000 population is 5.9, compared to 6.5 per 1,000 nationally. There are 320 practicing physicians and 98 dentists.

Among the many services provided by the area's hospitals are: a children's medical center, perinatal clinic, neonatal intensive care center, a surgical center, cancer treatment center, spinal cord injury and Gulf Region poison control center.

Major hospitals include:

Baptist Hospital has 535 beds and is the largest facility in Pensacola. The hospital operates a 24-hour a day Life Flight helicopter service.

Sacred Heart Hospital has a total of 375 beds and includes a 62-bed children's hospital. One of the state's seven neonatal intensive care centers is located at Sacred Heart.

University Hospital Clinic is a 130-bed facility owned and operated by the county. *West Florida Hospital*, the area's newest facility, is a 400 bed full service hospital. The Medical Center Clinic, a group practice comprised of over 80 specialists, is located adjacent to the hospital. Because of the medical specialization at the Clinic, West Florida Hospital draws nearly 50 percent of its patient load from outside the County.

The State Board of Health, the City of Pensacola and Escambia County Health units are active in various phases of public health. The Pensacola area is also served by the Rehabilitation Institute of Northwest Florida and the Community Health Association of Escambia County.

Emergency ambulance service in Escambia County is provided by the Ambulance Division of Escambia Medical Services. The Emergency Communications Center dispatches calls for medical, fire and disaster assistance. Forty-four full time registered Emergency Medical Technicians, including 20 Certified Paramedics, staff five ambulance 24 hours a day. Four ambulances are located in Pensacola and one in northern Escambia County at Century. In 1981 requests for ambulance service totaled 13,307 of which 2,210 were Advanced Life Support calls.

TOURISM: 1980 figures from the state Division of Tourism reflects 1,791,400 visitors to the Pensacola area. The economic impact of tourism is approximately $250,000,000.

There are 600 acres of public parks in the City of Pensacola and 480 in Escambia County. Tennis buffs will enjoy 34 public courts and there are 9 golf courses; 2 public, 2 semi-private and 5 private. A full range of sports activities is available from the obvious fishing, water sports and diving to hunting, horseback riding, motorcross, racquetball, handball, dog racing, stock car racing, high school and college athletics and semi-pro football.

Clear blue water, mild surf, gently sloping beaches, magnolias, a rich history dating back to the 16th century Spanish explorations of the New World are all offered in the Gulf Island National Seashore. Pensacola Beach, acclaimed as "the World's Whitest Beach", offers surfing, swimming, sailing, crabbing, skiing, shell collecting and fishing from the "World's Longest Fishing Pier". Pensacola Beach is located off U.S. 98E on Santa Rosa Island.

Pensacola Historic District: The rich history of Pensacola is constantly cared for by its citizens. Gracious homes, brick streets, and museums enhance the historical

flavor of Pensacola. Included in this district are: the Old Christ Church, completed in 1821, houses the city's historical museum; West Florida Museum of History, originally constructed for use as a warehouse; Transportation Museum, where wagons, carriages, fire engines and a street scene from Pensacola's past are displayed. The Hispanic Building includes the history and development of Northwest Florida. Seville Square Historical District includes shops, galleries, restaurants, and museums in keeping with Pensacola's rich historical past. St. Michael's Cemetery, deeded by St. Michael's Roman Catholic Church, provides a visible record of Pensacola's earlier years.

MOTELS: Escambia County has 57 motels with 3,132 units.

RESTAURANTS: A wide range of dining pleasures can be found in Pensacola's restaurants. Easily accessible to all are restaurants featuring outstanding regional and traditional American dishes and a diverse representation of international cuisine.

CHURCHES: Pensacola is a community rich in religious heritage and practice. More than 245 churches and synagogues represent some 30 denominations.

COMMUNICATIONS MEDIA: *Newspapers:* Daily: The Pensacola Journal (morning); The Pensacola News (evening). Circulation: Morning, 59,000; evening, 16,000; Sunday News-Journal, 72,000; Post Office Box 12710, Pensacola, FL32574. Weekly, Commercial News, P.O. Box 2237, Pensacola, FL 32503; Escambia County Beacon, P.O. Box 12157, Pensacola, FL 32590; Gulf Breeze Sentinel, P.O. Box 967, Gulf Breeze, FL 32561; The Press-

Gazette, P.O. Drawer 607, Milton, FL 32570; The Pensacola Voice, 213 East Yonge St., Pensacola, FL 32503; The New American, P.O. Box 422, Pensacola, FL 32592; Escambia Sun Press, P.O. Box 4625, Pensacola, FL 32507; The Islander, P.O. Box 292, Gulf Breeze, 32561.

AM Radio Stations: WBOP 980; WBSR 1450; WCOA 1370; WHYM 610; WNVY 1230; WPFA 790.

FM Radio Stations: WJLQ 100.7; WMEZ 94.1; WOWW 107.3; WTKX 101.5; WUWF 88.1; WXBM 102.7; WPCS 89.3.

Television Stations: WEAR, channel 3, ABC; WSRE, channel 23, PBS; WKRG, channel 5, CBS; WALA, channel 10, NBC; WPMI, channel 15, Independent. Cable television is available with 11 channels and Home Box Office.

CULTURAL ATTRACTIONS: The 1925-era Saenger Theatre has enjoyed an overwhelmingly successful first season after its restoration. From September 1981, when the theatre opened to the sounds of the Duke Ellington Orchestra and champagne toasts, through April 1982 when Broadway's A CHORUS LINE packed the house, over 60,000 people were entertained in the 1,761-seat theatre.

During the summer, the theatre features classic films every weekend, plus Pensacola Junior College's summer musical. The Saenger will continue to be the toast of Pensacola as its 1982-83 season brings ANNIE, the Atlanta Symphony, A CHRISTMAS CAROL, Western Opera Theater, THE GLASS MENAGERIE, Alabama Shakespeare, GIVE 'EM HELL HARRY, Carlos Montoya, CHILDREN OF A LESSER GOD, The Vienna Choir Boys, the 1940's RADIO HOUR, Ferrante and

Teicher, ANGEL STREET, Big Band Calvacade, Tamburitzans, six travel films, the Florida Junior Miss Pageant, musicals by PJC and the University of West Florida, and much, much more.

The Pensacola Arts Council was founded in 1967 to guide, coordinate and promote cultural activities. The Council contributes to the Pensacola Symphony, the Pensacola Little Theatre, Oratorio Society and the Pensacola Museum of Art. The PAC sponsors the Great Gulf Coast Arts Festival in November each year. Begun ten years ago, the juried art show is limited to 200 artists. An estimated 120,000 persons attended last year's festival. The Pensacola Symphony presents five performances throughout the year; the Pensacola Oratorio two; the Pensacola Little Theatre stages five plays on three consecutive weekends during the year. The Pensacola Museum of Art, 407 South Jefferson is open Tuesday-Saturday, 10 a.m. - 5 p.m.

The University of West Florida and Pensacola Junior College also present cultural activities throughout the year. Other special events include: *January:* Camelia Show; Florida Junior Miss Pageant; *February:* Mardy Gras, Heart Fund Run; *March:* Escambia County Special Olympics, Pensacola Hunter Jumper Show, Escambia County Community Games; *April:* Five Flags Speedway seasons opens, Hospitality Night at the Races, Greyhound Racing Season opens, Greater Pensacola Orchid Show; *May:* Pensacola Charity Horse Show, Outdoor Show, American Amateur Golf Classic; *June:* Coon Hound Championships/Bench Show, Pensacola Hunter Jumper Show, Pensacola Shark Rodeo; *July:* Pensacola International Billfish Tournament, Big Bang (4th of July), Southern Juniors Golf Championship; *August:* Ladies Billfish Tournament, Gulf Coast Masters Invitational Billfish Tournament, Depression Glass Show; *September:*

Seafood Festival, American Amateur Tennis Classic, National Hunting & Fishing Day, Fiesta of Five Flags Antique Show & Sale, Pensacola Hunter Jumper Show, Great Gulf Coast Gumbo Cookoff; *October:* St. Anne's Western Roundup, Greyhound season ends; Pensacola Interstate Fair, National Women's Clay Court Tennis Tournament; *November:* Great Gulf Coast Arts Festival, Greek Festival Bazaar, Escambia County Junior Miss Pageant, Blue Angels Air Show, Jerry Pate Boy Scouts Tournament; *December:* Winston Snowball Derby, Pensacola Hunter Jumper Show.

APPENDIX C

ECONOMIC PROFILE
BURKE COUNTY COMMUNITY 1982
PREPARED AND PUBLISHED BY THE
BURKE COUNTY CHAMBER OF COMMERCE,
WAYNESBORO, GEORGIA

LOCATION:
City of Waynesboro, Burke
County, 159 miles East
of Atlanta.

COMMERCIAL SERVICES

COMMUNICATIONS. Local Newspapers: 1 weekly. Other dailies delivered: Atlanta Constitution, Atlanta Journal, Augusta Herald, Savannah Morning News, Savannah Evening Press. 4 TV channels received (cable available). Local radio stations: 1 AM, 1 FM.

FINANCIAL FACILITIES. 4 banks with $62.6 million assets. 1 S&L branch with $321.9 million assets.

INDUSTRIAL SUPPORT SERVICES. Tool & die services, machine shops, fabricating, plating.

PUBLIC ACCOMMODATIONS. 4 restaurants (largest capacity, 100). 1 hotel (40 rooms). 1 motel (21 units). 7 meeting facilities (largest seats 200).

EDUCATION

COUNTY ELEMENTARY/SECONDARY SCHOOLS. 9 public schools with 250 teachers and 4,100 students. 189 high school graduates. 3 area private schools with 40 teachers and 577 students.

HIGHER EDUCATION. Area vo-tech: Augusta at Augusta (31 miles) with 2,640 students. Jr. college:

Emanuel County at Swainsboro (25 miles) with 378 students. 4-year college: Augusta College at Augusta (31 miles) with 3,825 students.

HEALTH

1 hospital (57 beds). 6 MDs. 4 dentists. County public health department. Burke County Emergency Medical Service. Burke County Health Facility. Keysville Convalescent & Nursing Center.

INCOME

PER CAPITA INCOME

	COUNTY	STATE	U.S.
1970	1,956	3,300	3,893
1975	3,420	5,029	5,861
1978	4,241	6,825	7,846
1979	5,217	7,627	8,757

MUNICIPAL SERVICES

FIRE PROTECTION. 6 full-time and 10 volunteer fire personnel. Protection outside city limits. Fire insurance classification 6.

POLICE PROTECTION. 19 full-time city police personnel and 26 county personnel. Protection outside city limits.

GARBAGE. Service provided by city.

PROFESSIONAL ENGINEER. None.

ZONING. City has a planning commission and zoning ordinance. Burke County has a Land Development Code.

POPULATION

	CITY	COUNTY	STATE (mil)	U.S. (mil)
1950	4,461	23,458	3.4	151.3
1960	5,359	20,596	3.9	179.3
1970	5,530	18,255	4.6	203.2
1980	5,760	19,349	5.3	222.2

RECREATION (COUNTY)

HIGHLIGHTS. 1 swimming pool. 4 tennis courts. 1 country club. 4 softball fields. 2 football fields. 2 outdoor basketball courts.

STATE PARK. Magnolia Springs (13 miles) has swimming, fishing, camping, water skiing, motor boating.

PUBLIC LAKE/RIVER. Clarks Hill Lake and Dam (50 miles) 1,200 miles of shoreland.

YEARLY EVENTS. Field Trials, "Bird Dog Capitol of the World".

SCENIC ATTRACTIONS. Historical landmarks.

TAXES

PROPERTY. Property taxes are determined by tax rates and assessment ratios, which vary by location. The only realistic way to compare property taxes for different locations is to use "effective tax rates" (tax rate multiplied by assessment ratio). Effective tax rates combine city, county, school, and state tax rates into one convenient figure — the yearly tax for each $1,000 of property at its fair market value. This rate applies to land, building, machinery, equipment, inventory, and retail inventory.

PROPERTY LOCATED	EFFECTIVE 1981 RATE
Within city	$9.23
Outside city	4.03

RETAIL SALES TAX. City and county have 1% local sales tax in addition to the 3% state sales tax.

TRANSPORTATION

AIR. Nearest commercial service at Augusta (31 miles). Airlines: Delta. Public airport: Waynesboro (3 miles S.). Type runway: Asphalt. Length: 3,200 ft. Services: aircraft tiedown, lighted runway.

MOTOR FREIGHT CARRIERS. 7 interstate. 2 intrastate.

RAIL. Southern Railway. Piggyback ramp at Augusta (31 miles).

WATER. Nearest navigable river: Savannah River (15 miles). Channel depth: 9 ft. Nearest public barge dock: Augusta (31 miles). Nearest seaport: Savannah (101 miles). Maintained channel: 38 ft.

UTILITIES

ELECTRICITY. A part of the state's modern, integrated electrical transmission system, Waynesboro has excellent ability to supply industrial demands of electricity. Compared to 47% for the U.S., coal accounts for 84% of fuel used in the state's power generating plants, thereby assuring long-term continuity.

NATURAL GAS. Supplied by Southern Natural Gas Company and available in industrial quantities on an interruptible basis.

WATER. Plant capacity 2,700,000 gal/day. Consumption (gal/day) 953,000 average; 1,119,000 maximum. Elevated storage capacity 600,000 gallons; ground storage capacity 250,000 gallons. Source: 1 deep well with pumping capacity of 800 gal/min. Briar Creek. Daily flow (cu ft/sec): 269 average, 108.3 minimum.

SEWAGE. Plant capacity 1,000,000 gal/day. Present load 630,000 gal/day. Oxidation filter treatment plant.

1981 INDUSTRY MIX BURKE COUNTY AREA

RANKED BY WAGE

ALL INDUSTRIES

INDUSTRY	ESTAB	EMPLOYMENT	% AREA	% FEMALE	WEEKLY WAGE
Mining	2	240	1%	–	$ -
Transportation/Public Utilities	141	5,111	5	–	336
Construction	494	6,369	6	–	285
Wholesale Trade	334	4,114	4	–	271
Manufacturing	261	24,987	24	55%	261
Public Administration	301	5,567	5	–	239
Finance/Insurance/Real Estate	360	4,151	4	–	238
Service	1,378	34,315	33	–	223
Agriculture/Forestry/Fishing	65	2,982	3	–	220
Retail Trade	1,296	15,844	15	–	154
All Others	25	66	1	–	–
TOTAL	4,657	103,746	100%	NA	$234

MANUFACTURING

Chemicals	26	1,471	6%	56%	$450
Paper	10	1,940	8	63	440
Transportation Equipment	2	592	2	20	–
Food	39	2,758	11	61	275
Stone/Clay/Glass/Concrete	22	2,142	9	58	275
Nonelectric Machinery	4	2,246	9	41	267
Instruments	7	3,884	16	42	232
Textiles	7	3,884	16	42	232
Fabricated Metals	24	1,456	6	26	225
Printing	24	656	3	44	221
Lumber	36	1,364	5	21	211
Electric Machinery	2	96	1	32	–
Rubber/Plastics	3	310	1	62	177
Furniture	5	647	3	61	158
Apparel	25	4,258	17	87	155
Petroleum Refining	1	20	1	90	•
Leather	1	20	1	5	–
Primary Metals	1	20	1	5	–
Miscellaneous Manufacturing	6	272	1	65	–
TOTAL	261	24,987	100	55%	$261

Counties: Burke, Emanuel, Jefferson, Jenkins, Richmond, Screven.

Source: Georgia Department of Industry and Trade, 1982.

MAJOR BURKE COUNTY MANUFACTURERS

INDUSTRY	COMPANY	PRODUCT	MALE	FEMALE	TOTAL
CHEMICAL	Gough Gin & Fertilizer (Gough)	Chemicals	14	1	15
	Waynesboro Fertilizer Co. (Waynesboro)	Fertilizer	8	1	9
FABRICATED METAL	Cowart Iron Works, Inc. (Midville)	Structural Steel	35	2	37
	Keller Ladders of Georgia (Waynesboro)	Aluminum Ladders			46
	Waynesboro Industries, Inc. (Waynesboro)	Food Service Equip.			125
LUMBER	ITT Rayonier, Inc. (Midville)	Timber	37		37
	Sardis Lumber Company (Sardis)	Timber	13	1	14
	Kimberly-Clark Corp., Southeastern U.S. Forest Products Co. (Waynesboro)	Lumber			220
	Talley Corbett Box Co. (Waynesboro)	Wood Products	15	15	30

APPAREL	Burke Manufacturing Co. (Waynesboro)	Men's & Boy's Jackets	19	157	176
	Samson Manufacturing Co. (Waynesboro)	Curtains & Draperies			380
PRINTING	Roy F. Chalker Publishing Co. (Waynesboro)	Newspaper Printing	12	18	30
	The True Citizen (Waynesboro)	Newspaper Printing	2	10	12
NON-ELECTRIC MACHINERY	Midville Tool & Die Co. (Midville)	Jigs, Fixtures & Machinery	9	0	9
ELECTRIC MACHINERY	Perfection Products Co. (Waynesboro)	Room Heaters			200
FURNITURE	Keller Aluminum Furniture of Georgia (Waynesboro)	Aluminum Furniture			175
CONCRETE	Builders Supply Co.	Ready Mix Concrete	4	1	5
	McKinney Wholesale Co., Inc. (Waynesboro)	Concrete Building Materials			10
	Waynesboro Concrete Products Co., Inc. (Waynesboro)	Concrete Products	7	1	8

Office-Supreme Court, U.S.
FILED
MAR 4 1983
STEVAS,
CLERK

No. 82-1295

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[redacted] BRIEF OF AMICUS CURIAE ORANGE COUNTY, FLORIDA IN SUPPORT OF THE APPEAL

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THE CASILLAS PRESS, INC. – 1717 K Street N.W. – Washington, D.C. – 223-1230

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MOTION OF ORANGE COUNTY, FLORIDA FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF THE APPEAL

Pursuant to Rule 36 of the Rules of this Court, Orange County, Florida, a non-charter county, through counsel, seeks leave to file the accompanying Amicus Curiae Brief. This non-charter county is governed by the same constitutional and statutory provisions which heretofore have governed Appellant Escambia County, Florida ("Escambia"), and therefore, is impacted directly by the Fifth Circuit's decision invalidating, as applied to Escambia, Florida's constitutional requirements of at-large elections and reapportionment based on the one-person, one-vote

principle and especially the Fifth Circuit's decision narrowly interpreting the scope of Florida Constitution, Art. VIII § 1(f) and Florida Statutes, § 125.01.

Appellant Escambia County is a non-charter county. The questions in this case make the decision herein of enormous importance to the 61 other Florida non-charter counties who operate under the same constitutional and statutory provisions as Escambia County.

The decisions below have implications in Florida beyond Escambia in holding that, under Florida's Constitution, county commissioners in a non-charter county are powerless to enact a new election system where the county's existing election system has been held unconstitutional. This portion of the Court's decision was not limited to the facts of this case, but, rather, could be applicable to all non-charter counties in Florida.

It is the position of Amicus that Florida's Constitution and statutes give county commissions expansive powers including the power to enact a new election system where necessary to remedy a constitutional deficiency and this interpretation of Florida's constitution and statutes is binding upon this Court.

This brief is sponsored under Rule 36.4 of the Court by the undersigned authorized law officer of the named county political subdivision of Florida who has signed it and who desires to appear as Amicus herein in support of Appellants.

Accordingly Amicus seeks leave to file the attached brief under Rule 36 and particularly Rule 36.4.

Respectfully submitted,

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BRIEF OF AMICUS CURIAE ORANGE COUNTY, FLORIDA IN SUPPORT OF APPEAL

STATEMENT OF INTEREST OF AMICUS CURIAE

The focal point of this case is the alleged vote dilution which occurs in Escambia County, Florida by application in that county of Fla. Const. Art. VIII, § 1(e) and descendant Florida Statutes[1] enacted pertinent thereto.

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[1]Florida Statutes, Section 99.032, and Section 124.01 are clearly enacted by virtue of language originally present in Article VIII, Section 5 of the Florida Constitution of 1885 as amended in 1900. It is this constitutional language, as found in the present Florida Constitution, Article VIII, § 1(e), which the Federal Courts below found constitutionally offensive as applied in Escambia County.

However, as part of the relief stemming from the District Court's judgment and the opinion of the Fifth Circuit upholding the district court, there is now of record judicial authority that Fla. Const. Art. VIII, § 1(f), commonly known as the "County Home Rule" subsection, does not provide non-chartered Florida counties with sufficient authority to erect an alternative means of electing county commissioners when the operation of Fla. Const. Art. VIII, § 1(e) pertinent to the election of county commissioners and descendant statutes are suspended due to invalidity under the Federal Constitution.

The Federal Courts below have held this impotence arises from the absence of a specific state constitutional grant or statutory grant of such authority to non-charter counties. The logical extension of this decision results in an effective emasculation of the Home Rule provisions of the Florida State Constitution and, as such, is potentially dangerous to, and of great importance to, the vast majority of Florida's counties, which are not chartered.

The Board of County Commissioners of Escambia County enacted, by Ordinance 78-15, an ordinance providing for the election of seven county commissioners using a combination of five resident single member commissioners' districts and two commissioners to be elected from the county at large. This legislative action by the Escambia County board was in response to the Federal District Court's mandate to present a constitutionally valid plan of electing county commissioners and the ordinance was offered by the Board as a "legislative plan" in accord with this court's requirements enunciated in *Wise v. Lipscomb.*[2]

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[2] *Wise v. Lipscomb*, 437 U.S. 535, 57 L.Ed. 2d 411, 98 S.Ct. 2493 (1978).

The District Court found, however, that the proffered ordinance was not within the legislative authority of the board of county commissioners and, consequently, void.[3]

The Court of Appeals, upon its rehearing of this case reversed its earlier decision and held the at large method of electing county commissioners invalid in Escambia County and then agreed with the District Court's views as to the impotence of the Escambia Board of County Commissioners to enact a remedial ordinance erecting an alternative means of electing county commissioners. The reasoning of the Court of Appeals was the same as that of the District Court.[4]

Amicus curiae Orange County, Florida, is a non-chartered county, as are sixty-one other counties in Florida. Amicus here contends that Federal Courts below, in construing the Home Rule powers granted these non-chartered counties under Fla. Const. Art. VIII, § 1(f) of the Florida State Constitution, and the language of Fla. Const. Art. VII, § 1(e) have greatly minimized the grant of "Home Rule" power given these counties by the people of Florida. Amicus contends that the constitutional grants of power and the grant of power under Florida Statute, Section 125.01 provide ample authority to any non-charter Florida county in which the operation of the full language of Fla. Const. Art. VIII, § 1(e) and pertinent descendant statutes has been suspended by Federal Court order due to invalidity under the Federal Constitution. It is the purpose

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[3]Memorandum Decision of the United States District Court for the Northern District of Florida in *McMillan v. Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla., Sept. 24, 1979), at page 68a, Appellant's Jurisdictional Statement.

[4]Decision on Rehearing of the Fifth Circuit in *McMillan v. Escambia County, Florida*, 688 F.2d 960 (5th Cir. 1982) at pages 25a through 29a, Appellant's jurisdictional statement.

of this Amicus brief to present argument of this point alone.

Further, Amicus submits that the construction given Fla. Const. Art. VIII, § 1(f) by the Federal Courts below is antithetical to the proper reading of the constitutional language and contrary to the result which would have been reached had the question been submitted to Florida courts.

Accordingly, Amicus respectfully seeks hearing by this court in order to put to rest the erroneous and unduly restrictive construction placed upon these important provisions of the Florida State Constitution by the Federal Courts below.

SUMMARY OF ARGUMENT

This Court in the *Virginia Coupon* cases, *Poindexter v. Greenhow*, 114 U.S. 270 (1885) 5 S.Ct. 903 29 L.Ed 185, and the Florida Supreme Court in *Town of Boynton v. State ex rel. Davis*, Supreme Court of Florida (1932) 138 So. 639, have both recognized the basic rule of constitutional and statutory construction that a statute (and presumably a state constitutional provision) may be perfectly valid applied generally but invalid as applied to one particular set of facts. The case at bar is a similar case of "occasional" unconstitutionality arising from application of an otherwise valid law to an isolated set of facts.

The language of Fla. Const. Art. VIII, § 1(e) coming from a 1900 amendment to the Florida constitution and Florida statutes descendant therefrom were found constitutionally invalid and inoperative in Escambia County due to the unusual sociological factors found extant there by the Federal Courts below. Thus, there is no constitu-

tionally offensive Art. VIII, § 1(e) language or statutes descendant therefrom operative in Escambia County with which an ordinance passed under the Home Rule powers of Fla. Const. Art. VIII, § 1(f) could be inconsistent. Consequently, there can be no Florida constitutional or statutory restraint upon Escambia County prohibiting it from choosing its own method of electing county commissioners.

Escambia's Board of County Commissioners chose by ordinance in 1978 to erect a method of elections which would utilize five district commissioners, each to be elected solely by the residents of the district, and two additional commissioners to be elected at large. Considering the judicial excision of the constitutionally objectionable language of Florida constitution pertinent to the at large election of county commissioners and the same excision of the Florida statutes descendant therefrom, there can be no source of inconsistency which would constrain the legality of the Escambia County ordinance and such local legislation should be permitted to stand.

ARGUMENT

A FLORIDA NON-CHARTER COUNTY IS EMPOWERED, BY "HOME RULE", TO ENACT BY ORDINANCE A METHOD OF ELECTING COMMISSIONERS OTHER THAN THAT SPECIFIED BY FLORIDA CONSTITUTION, ARTICLE VIII, SECTION 1(e) WHEN THE OPERATION OF THAT PROVISION IS FOUND CONSTITUTIONALLY INVALID WITHIN SUCH A COUNTY.

A. THE FLORIDA STATE CONSTITUTION EMPOWERS A NON-CHARTER COUNTY TO LEGISLATE BY ORDINANCE IN ANY PROPER AREA WHEN SUCH ORDINANCE IS NOT INCONSISTENT WITH GENERAL OR SPECIAL LAW.

Appellant Escambia County contends the finding of "vote dilution" by the Federal Courts below was improper both on the facts and under the existing law as enunciated by this Court. Amicus adopts and affirms the arguments put forward by Escambia in its jurisdictional statement.

Amicus Orange County, Florida here argues only that the interpretation placed upon the "Home Rule" provisions of Fla. Const. Art. VIII, § 1(e) by the Federal Courts below is unduly restrictive and wholly contrary to the purpose and intent of such provisions. The proper resolution of this question is of paramount importance to non-charter Florida counties. The decisions of the Federal Courts below have voided the provisions of the Florida Constitution and Florida Statutes which mandate an exclusively at large system of electing county commissioners in Escambia County. Thus, a temporary lacuna as to the method of election exists. The question presented to the Federal Courts below, and hopefully to be addressed by this Court, is whether such lacuna shall continue until and unless the Florida Constitution is amended and remedial statutes enacted subsequent to such amendment, or may

the citizens of the affected county, through their elected representatives, the county commissioners, cure the equal protection defect through remedial legislation addressed to the method of electing county commissioners and thus immediately restore local government to normalcy. Amicus contends the latter answer is surely preferable, especially in view of this Court's comments favoring a legislative solution to the problems of redistricting and reapportionment made in *Wise v. Lipscomb,* which pronouncement echoes the Court's earlier pronouncements made repeatedly on this topic.

That the operation of Fla. Const. Art. VIII, § 1(e) as it calls for at large election of county commissioners is unconstitutional and therefore void in Escambia County but yet remains valid and subsisting law applicable to all other non-chartered Florida counties is unusual but certainly not unique. This court has long endorsed, as in the *Missouri Rate Cases,*[5] the canon of statutory construction under which a statute (and presumably a state constitutional provision) may apply validly to the great majority of given sets of facts (such as counties with a relative homogenous sociological composition or other common sociological factors) and yet be unconstitutional in application to a similar set of facts (such as a county with a sociological composition and history such as Escambia's).

The provisions of the Fla. Const. Art. VIII, § 1(f)[6] which vest non-charter counties with the right to legislate in all areas of legislative concern to counties in manner not

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[5]Missouri Rate Cases, 230 US 474, 57 L.Ed. 1571, 33 S. Ct. 975; (1913).

[6]Article VIII, Section 1(f), Florida Constitution, 1968 Revision, reads:

Non-charter government. Counties not operating under

inconsistent with general or special law have been grievously misconstrued by the Federal Courts below.

Fla. Const. Art. VIII, § 1(f) correctly understood states that a non-chartered county may be delegated all powers of self-government except the power to legislate over municipal ordinances. The county may adopt ordinances in any area legitimately touched by local government, if provided by general law, so long as such an ordinance is not inconsistent with general or special law.[7]

In Escambia County, by order of the Federal Courts below, there is no Fla. Const. Art. VIII, § 1(e) language or

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> county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

[7]Discussion of this construction of the subject constitutional languages found in *Commentary*, Article VIII, § 1(f) to the Florida Constitution, 1968 Version by Talbot "Sandy" D'Alemberte. These comments are found following many new or amended sections of the 1968 Florida Constitution in Florida Statutes, Annotated, West Publishing Co., St. Paul, Minn. The publishers at 25 F.S.A. page VII, describe the value of the comments as follows:

> An outstanding special feature appearing in these volumes consist of a general Introduction and of specific Comments under particular sections of the Constitution, prepared by Talbot "Sandy" D'Alemberte. The outstanding contribution made by the author to the successful drafting and adoption of the 1968 Revision is reflected in the knowledgeable and informative facts and analyses found in the Introduction and Comments. His academic background which included graduate study of constitutional history at the University of London, his authorship of various articles and commentaries, his legislative experience as a member of the Florida House of Represen-

descendant Florida statutory language which could be found objectionable under the Federal Constitution. Thus, there is *no* general or special law governing the methods of election of county commissioners with which an ordinance passed under the Home Rule powers of Fla. Const. Art. VIII, § 1(f) could be inconsistent. Consequently, there can be no pertinent Florida constitutional or statutory restraint upon Escambia County to legislate

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tatives, and his practical experience as a partner in the firm of Scott, McCharthy, Steel, Hector & Davis, in Miami, qualified him uniquely to undertake the preparation of this special feature.

Mr. D'Alemberte's comment to the 1968 Amendments to the Florida Constitution, Article VIII, § 1(f), found at 28a F.S.A. pages 270-1, states:

> Subsection (f). This subsection embodies several new provisions which were proposed in a different manner by the Constitutional Revision Commission. That recommendation was that "counties shall have the power of self-government except as otherwise provided by general or special law." The reverse is now the case under this subsection which provides that counties shall have such powers of self government as is provided by general or special law. Absent special or general legislation counties have no constitutional powers under this subsection. The first sentence in this subsection provides that powers may be delegated to county governments by general or special law. The second sentence is somewhat inconsistent with the first, however, in that the authority of the county commissioners in non-charter counties to enact ordinances shall be "in a manner prescribed by general law". In any case, county governments may be delegated or granted powers by the legislature to operate as self-governing units even to the extent of having jurisdiction over municipal ordinances when a charter is adopted (see next subsection). *Absent a charter, the county government may be delegated all powers of self-government except the power over municipal ordinances.* The county may adopt ordinances, if provided by general law, not inconsistent with general or special law. (emphasis supplied)

upon its method of choosing county commissioners provided it is given the power to do so by Florida constitutional or statutory authority.

The grant of "Home Rule" power given non-charter counties is fleshed out by various statutory enactments empowering county action in various spheres of local government. Paramount among these statutes is Florida Statutes, Section 125.01, which sets forth the principle powers of each non-chartered county's Board of County Commissioners which may be exercised in any proper area in fashion not inconsistent with general or special law.[8]

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[8]Florida Statutes, Section 125.01 provides, in part pertinent to the issue herein:

"125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, *this power shall include, but shall not be restricted to,* the power to:

(a) Adopt its own rules of procedure, *select its officers,* and set the time and place of its official meetings. . .

(t) Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with the law.

(w) Perform any other acts not inconsistent with law which are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law. . .

(3)(a) No enumeration of powers herein shall be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to carrying out such enumerated powers, including, specifically, authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property.

(b) *The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this*

Among those powers specifically granted these boards is "the power to carry on county government," including the power to "select its officers".

The scope and sweep of the Legislative powers conferred on non-charter counties by virtue of Florida Statute, 125.01, has been indicated by the Supreme Court of Florida in the recent watershed case, *Speer v. Olson.*[9] In *Speer,* the Florida court held that a non-charter county has full power to legislate on a particular subject relating to self-government unless that particular topic has been pre-empted by the Florida Legislature by either general or special law. In *Speer,* the Florida court then proceeds to commend the legislation of Florida Statutes, Section 125.01 as eliminating the necessity of a non-charter county petitioning the Legislature for a special act granting the petitioning county the authority to legislate subjects for which it lacked specific statutory authority.[10]

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section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution. (emphasis supplied)

[9]*Speer v. Olson,* 367 So.2d 207, Florida Supreme Court, 1979.

[10]Id, at 367 So.2d 211:

(2) The first sentence of Section 125.01(1), Florida Statutes, (1975), grants to the governing body of a county the full power to carry on county government. *Unless the Legislature has pre-empted a particular subject relating to county government by either general relating to county government by either general or special law, the county governing body, by reason of this sentence, has full authority to act through the exercise of home rules power.* There is no statute, general or special, which either specifically authorizes or restricts Pasco County with respect to the issuance of general obligation bonds to acquire sewage and water systems and to pledge for their payment the net revenues to be derived from the operation of such facilities and ad valorem teaxes levied within the

The view of the Federal Courts below is that the legislative vacuum caused by the unconstitutionality of the at large method of electing county commissioners in Escambia County could be filled only by affirmative state action. However, in the case of Escambia County's affirmity, following this logic of the Federal Courts, the vacuum as to a method of choosing county commissioners could be filled only by adoption of a county charter by the Escambia County populace (thus vesting the board of county commissioners with what the Federal Courts viewed as "full" Home Rule powers in accord with Fla. Const. Art. VIII, § 1(g)) or amendment of Art. VIII, § 1(e) of the Florida Constitution. It is the view of the Florida court as stated in *Speer*, that this is precisely the type of wrong cured by the "Home Rule" provisions of Fla. Const. Art. VIII, § 1(f) and Florida Statute 125.01. These provisions read together enable a non-charter board of county commissioners to legislate on the method of choosing county commissioners when, as in Escambia County's case due to Federal judicial excision, there is no state constitutional provision or statute with which such an ordinance could be inconsistent.[11]

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area of the Unit. The first sentence of Section 125.01(1), Florida Statutes (1975) therefore, empowers the county board to proceed under its home rule power to accomplish this purpose. This was done by the enactment of the ordinance and the adoption of the bond resolution after the bond election.

[11] Id, at 367 So.2d 211;

The Florida Court, in *Speer*, outlined not only the scope of "Home Rule" powers but, by citing *State v. Orange County*, 281 So.2d 310 (Fla. 1973), illustrated the evils which the "Home Rule" provision of the Florida Constitution and Florida Statutes, Section 125.01, are designed to overcome, namely, the filling of a "legislative vacuum", The precise approach used in authorizing the proposed

B. THE COURTS BELOW STRUCK THE LANGUAGE OF THE 1900 AMENDMENT TO THE FLORIDA CONSTITUTION OF 1885 AS FOUND IN THE PRESENT FLORIDA CONSTITUTION AS CONSTITUTIONALLY OFFENSIVE. THE REMAINING LANGUAGE OF FLORIDA CONSTITUTION, ARTICLE VIII, SECTION 1(e) AND FLORIDA STATUTES, SECTION 125.01 PROVIDE RESIDUAL AUTHORITY TO A NON-CHARTERED COUNTY TO ERECT AN ALTERNATIVE MEANS OF ELECTION FOR COUNTY COMMISSIONERS.

There is no question under either Federal or Florida law that the judgment Federal Courts below finding the operation of the at large election provisions of Fla. Const. Art. VIII, § 1(e) and descendant Florida Statutes invalid in Escambia County terminated the operation of some por-

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bonds by Pasco County was previously employed in the case of *State v. Orange County*, 281 So.2d 310 (Fla. 1973). In that case Orange County, a noncharter county, enacted a home rule ordinance authorizing it to acquire and construct county capital projects and to issue revenue obligations to finance the cost thereof, payable from race track funds and jai alai fronton funds. This Court found that there was no prohibition to be found in the Florida Constitution or general or special law, but, on the contrary, that there was delegated authority for implementing by ordinance the issuance of the proposed bonds. This Court noted that the intent of the Legislature in enacting Chapter 125 was to obviate the necessity of going to the Legislature to get a special act passed authorizing bonds of the type proposed: *"Instead of going to the Legislature to get a special bill passed authorizing such building fund revenue bonds, the Orange County Commissioners under the authority of the 1968 Constitution and enabling statutes now may pass an ordinance for such purpose, as they did in this case, because there is nothing inconsistent thereto in general or special law.* On the contrary, there is ample delegated authority for such purpose. *The object of Article VIII of the 1968 Constitution was to do away the local bill evil to this extent."*

tion of Fla. Const. Art. VIII, § 1(e) and its descendant Florida election statutes in Escambia County.

The question thus arises, under applicable principles of construction, as to precisely which provisions or what language of Art. VIII, § 1(e) is constitutionally invalid. This determination must be made in order to determine, first, the extent of the vacuum caused by such Federal judicial excision and, second, the perimeters of the remaining grants of constitutional and statutory authority.[12]

The present language of Fla. Const. Art. VIII, § 1(e) is clearly an amalgam of two components. First, the language of this subsection regarding the composition of the Board of County Commissioners as being five members, one from each of five equal and contiguous districts, all to be elected by the electors of the county at large, is clearly a restatement of the constitutionally mandated at large method of electing county commissioners which has been present in the Florida State Constitution since 1900.[13] The language added to this basic at large

[12]This Court construes a state constitution and state statutes in the same fashion as the state supreme court would. Thus, settled principles of construction endorsed by the Florida Supreme Court should be used in an aid to construction in this case. Florida law is settled that the common rules of construction as to statutes may be utilized in judicial interpretation and construction of provisions of the Florida State Constitution. *State ex rel. Moodie v. Bryan,* (1905) 50 Fla. 2973, 39 So. 929; *Mugge v. Warnell Lumber & Veneer Co.,* (1909) 58 Fla. 318, 50 So. 645; *Perry v. Consolidated Special Tax School Dist.,* (1925) 89 Fla. 271, 103 So. 639; *State ex rel. McKay v. Keller,* (1939) 140 Fla. 346, 191 So. 542.

[13]Article VIII, Section 5, Florida Constitution of 1885 as amended in 1900, read as follows:

> "Immediately upon the ratification of this Amendment the county commissioners of the several counties of this State shall divide their respective counties into five commissioners' districts, to be numbered respectively from one to

scheme extending this constitutional subsection by adding that the governing body of each county shall be (unless otherwise provided by county charter) the board of county commissioners composed of five members and serving staggered terms stemmed from the same popular source as Fla. Const. Art. VIII, § 1(g) creating general charter government as an alternative form of county government and is totally new to the 1900 Constitutional language found in Art. VIII, § 1(e).[14]

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five, inclusive, and each district shall shall be as nearly as possible equal in proportion to population, and thereafter there shall be in each of such districts a county commissioner, who shall be elected by the qualified electors of said county, at the time and place of voting for other county officers, and shall hold his office for two years. The powers, duties and compensation of such county commissioners shall be prescribed by law: Provided, that nothing herein shall affect the terms of commissioners holding office at the time of such division: Provided, further, that all vacancies occurring by limitation of terms, or from death, resignation or otherwise, before the election of 1902, shall be filled by appointment by the Governor, as now provided by law."

[14]Commentary, 1968 Florida Constitution, Article VII, § 1(e) Florida Statutes, Annotated, West Publishing Co., St. Paul, Minn. at 26 F.S.A. 269:

> Subsection (e). This subsection was taken with only one amendment from the Revision Commission recommendations. The amendment is the substitution in the last sentence of "residing in" for the word "from", recommended by the Commission. The difference here is that the new constitution would require that the county commissioners reside in the district which they represent.
>
> Basically, this subsection is a restatement of Article VIII, Section 5 of the 1885 Constitution. A significant change in the new section, however, is the provision in the first sentence that county charters may provide "otherwise". Under the 1885 Constitution, a different method of county government could only be provided by a special constitu-

It is patent that the Federal Courts below objected to and struck the 1900 at large election scheme from Art. VIII, § 1(e) as constitutionally invalid.[15]

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for the establishment of charter governments and subsection (g) provides for the county governments under a charter.

[15]Memorandum Decision and Judgment of the United States District Court for the Northern District of Florida in *McMillan v. Escambia County, Florida*, PCA No. 77-0432 (N.D. Fla. July 10, 1978), as found at page 74a, Appellant's Jurisdictional Statement:

"The board of county commissioners and school board election system had their genesis in the midst of a concerted state effort to institutionalize white supremacy. Until 1901, the county commissioners were appointed by the governor. The evidence shows that appointment was favored over election to ensure against the possibility that blacks might be elected in majority black counties. Efforts to keep blacks out of government at the county level began during Reconstruction and were greatly intensified during the state's "redemption" by white Democrats. To ensure that blacks were not elected in majority black counties, county commissioners were appointed by the governor from 1868 to 1901. The poll tax was instituted in 1889 to disenfranchise blacks. 1889 Fla. Laws, ch. 3850, § 1. Although black voter registration remained high, at least in some parts of the state, up until the turn of the century, enough blacks were disenfranchised to permit the state to allow at-large election of county commissioners, Fla. Const. Art. 8, § 5 (1901), and the members of the newly created boards of public instruction (counterpart of today's school boards). 1895 Fla. Laws, ch. 4328."

The same memorandum decision, as found at page 92a, Appellant's Jurisdictional Statement, states:

"The at-large requirements of the election system (both general election and primaries) of the board of county commissioners are based on the 1901 amendment to the Florida Constitution, Fla. Const., art. 8, § 5. The historical background of 1901 amendment includes a general pattern of disenfranchisement and other discrimination at the hands of the state. The other laws of the period relating to selection of commissioners – gubernatorial appointment prior to 1901 and single-member district white primary after 1907 – were clearly race related. The Jim Crow laws were also being instituted in the early 1900's. The sequence of testified that in Pensacola black registration was high in 1900, and it was only thereafter that they were effectively excluded from the political process."

It is equally obvious that there is no constitutional objection to the Florida Constitution definition of the Board of County Commissioners as the governing body of the County unless changed by county charter as found in Fla. Const. Art. VIII, § 1(e). Thus, in accord with settled rules of construction under Florida public law, this section of the State Constitution must be considered as still intact, valid and subsisting in Escambia County.

However, the constitutionally offensive language in Fla. Const. Art. VIII, § 1(e) and its descendant statutes which was struck by the Federal Courts below is but a small part of the Florida constitutional and Florida statutory grant of power to non-chartered counties vesting such counties with the right to hold and regulate elections to choose members of the board of county commissioners.

The Board of County Commissioners is defined as the governing body of a non-chartered county under the valid provisions of Fla. Const. Art. VIII, § 1(e) and given the power of "Home Rule" legislation under the provisions of Fla. Const. Art. VIII, § 1(f). The primary statutory grant of legislative power on local self government is found in Florida Statutes, Section 125.01 to which reference is made hereinabove. This statutory section vests the Board of County Commissioners with plenary power to legislate by ordinance on any conceivable topic of legitimate local self governmental interest so long as such county legislation is not specifically inconsistent with the Florida Statutes.

The Federal Courts below have effectively excised from operation the Florida constitutional provisions and descendant statutory language mandating the exclusive use of the at large method of electing county commissioners in Escambia County as contemplated by the language of Art.

VIII, Section 5, Florida Constitution of 1885, as amended in 1900. However, under the applicable canons of statutory construction, there remains an ample grant to non-charter counties of power within which the legislative authority of Escambia may erect an alternative and workable method of choosing county commissioners. This occurs under the canon of statutory construction which mandates the survival of constitutionally valid sections of a state constitution and state statutes after constitutionally invalid language has been struck. This canon is an ancient and basic principle of Florida public law.[16]

[16] *Cramp v. Board of Public Instruction*, 137 So.2d 828 (Florida Supreme Court, 1962), *State ex rel. Boyd v. Deal*, 24 Fla. 293, 4 So. 899 (Florida Supreme Court, 1888).

CONCLUSION

For the reasons set forth hereinabove, the Circuit Court of Appeals decision appealed herein should be reversed and this court should properly construct the meaning and intent of Fla. Const. Art. VIII, § 1(f) and Florida Statutes, Section 125.01, read in *pari materia*.

Respectfully submitted,

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FILED
AUG 8 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1295

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF APPELLANTS

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QUESTIONS PRESENTED

1. Whether an at-large election system required by a state constitution violates the fourteenth amendment to the United States Constitution where there is no evidence that the election system was established or is being maintained for a discriminatory purpose.

2. Whether, following a decision invalidating an at-large election system required by a state constitution, a court may impose a judicially created remedy rather than consider as a "legislative plan" a remedy a legislative body adopts where the state constitution and statutes provide the legislative body with expansive powers and do not prohibit it from adopting a remedy for the violations found.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1295

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF APPELLANTS

Appellants Escambia County, Florida ("Escambia") and the members of the Escambia Board of County Commissioners ("County Commission"),[1] through counsel, submit

[1]The current members of the County Commission are: John E. Frenkel, Jr.; Billy G. Tennant; Kenneth J. Kelson; Gerald Woolard; and Marvin Beck. Appellants Woolard, Frenkel and Tennant were substituted for Charles Deese, Jack Kenney and Zearl Lancaster respectively, who were members of the County Commission at the time the suit was brought. The remaining parties to this action are: the Supervisor of Elections for Escambia, Joe Oldmixon, who is a defendant but is not a party to this appeal; Henry T. McMillan, appellee; Robert Crane, appellee; Charles L. Scott, appellee; William F. Maxwell, appellee; Clifford Stokes, appellee; and the class of all black citizens of Escambia, appellees. This suit also was brought against the School District of Escambia, the Escambia School Board and the members thereof. The School Board aspect of the case was resolved, McMillan v. Escambia County, Fla., 638 F.2d 1239 (5th Cir. 1981), and was not part of the judgment from which this appeal was taken.

this brief and request the Court to reverse the judgment of the United States Court of Appeals for the Fifth Circuit from which this appeal was taken.

OPINIONS BELOW

The September 24, 1982 and February 19, 1981 decisions of the Fifth Circuit in *McMillan v. Escambia County, Florida* are reported at 688 F.2d 960; 638 F.2d 1249; and 638 F.2d 1239 and are reprinted in the Jurisdictional Statement[2] in Appendix A at 1a and Appendix B at 52a and 30a respectively. The December 3, 1979 Memorandum Decision and Order, the September 24, 1979 Memorandum Decision and the July 10, 1978 Memorandum Decision and Judgment of the United States District Court for the Northern District of Florida are unreported but are reprinted in the Jurisdictional Statement in Appendix B at 54a, 59a, 66a, 71a and 114a respectively.

JURISDICTION

Pursuant to 28 U.S.C. § 1254(2) (1976), this Court has jurisdiction over the instant appeal.

The Fifth Circuit entered judgment on September 24, 1982, and on November 4, 1982, denied appellants' suggestion of rehearing en banc. (The Judgment and the order denying the suggestion of rehearing are reprinted in the Jurisdictional Statement in Appendix C at 116a and 118a respectively.) On November 30, 1982, appellants filed with the Fifth Circuit a Notice of Appeal to the Supreme Court of the United States. (The notice of appeal is reprinted in

[2]Citations to materials which appear in: the Jurisdictional Statement are to "J.S.;" the Joint Appendix are to "J.A.;" and the Record are to "R."

the Jurisdictional Statement in Appendix D at 120a.) The Jurisdictional Statement was filed, and the appeal was docketed, on February 2, 1983.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The provisions of U.S. Const. amend. XIV; Fla. Const. art. VIII, § 1; Fla. Stat. § 125.001-.59 (1981 & Supp. 1982) which are involved in this case are reprinted in the Jurisdictional Statement in Appendix E at 122a, 123a and 126a respectively.

STATEMENT OF THE CASE[3]

I. Escambia County, Florida.

Escambia is a non-charter county[4] comprising approximately 661 square miles[5]. According to the 1970 census, the population of Escambia was 205,334, of whom 40,362, or 19.7%, were black.[6]

Pursuant to Fla. Const. art. VIII, § 1(e), non-charter counties, such as Escambia, are governed by five-member boards of county commissioners. The Florida Constitution and statutes secure Florida's non-charter counties

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[3]Except as otherwise noted, the facts set forth herein are those facts in existence at the time of the trial – May, 1978.

[4]Pretrial stipulation ¶ F(3). (J.A. 69.)

[5]Bureau of the Census, U.S. Dept. of Commerce, PC80-1-A11, 1980 Census of Population – Florida 8 (1982).

[6]Pretrial Stipulation ¶ F(1). (J.A. 68.) The current population of Escambia is approximately 233,794, of whom 45,945, or 19.7%, are black. Bureau of the Census, U.S. Dept. of Commerce, PC80-1-B11, 1980 Census of Population – Florida 15,25 (1982).

broad home rule powers.[7] Under these powers, county commissions have "such power of self-government as is provided by general or special law" and "may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law . . . ."[8] Florida law enumerates specific powers of county commissions but expressly provides that the power of county commissions to carry on self-government is not restricted to the enumerated powers.[9]

County commissioners are elected to four-year, staggered terms.[10] Candidates in the primary and general elections are elected at-large but run only from the district in which each resides.[11] To become a candidate, Fla. Stat. § 99.092(1) (1981) provides for the payment by each person desiring to run of a filing fee equivalent to three (3) percent of the annual salary of a county commissioner and, if

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[7]Fla. Const. art. VIII, § 1(f); Fla. Stat. § 125.01(3) (b) (1981).

[8]Fla. Const. art VIII, § 1(f).

[9]Fla. Stat. § 125.01(1)(1981).

[10]Fla. Const. art. VIII, § 1(e).

[11]*Id.;* Fla. Stat. § 99.032 (1981). The at-large system for general elections was instituted in 1901. McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 4-5 (N.D. Fla. July 10, 1978) (Memorandum Decision). (J.S. 74.) Previously, between 1868 and 1901, the governor had appointed county commissioners. *Id.* at 4. (J.S. 74a.) By 1900, blacks had been disenfranchised, and in 1901, an amendment to the Florida Constitution establishing at-large elections was ratified. *Id.* at 4-5. (J.S. 74a-75a.)

The at-large system for primary elections was not established until 1954. *Id.* at 5-6. (J.S. 75a-76a.) In 1907, a statute was enacted which provided for candidates in the primaries to be elected from single-member districts. 1907 Fla. Laws ch. 5697, § 1. In 1954, the Florida Supreme Court struck down this statute as violative of Florida's constitutional requirement of at-large elections. Ervin v. Richardson, 70 So.2d 585 (Fla. 1954). Due to that decision, subsequent primaries have been conducted under the at-large system.

levied by the executive committee of the person's political party, a committee assessment of up to two (2) percent of a county commissioner's salary. If a person is unable to afford the filing fee and committee assessment without undue burden on his or her financial resources, he or she may gain ballot access through a petition signed by three (3) percent of the registered voters in the county from that person's party.[12] There is no majority vote requirement in the general election, but there is such a requirement in the primary elections.[13]

Since 1945, when the Florida Supreme Court held unconstitutional the white primary,[14] there have been "no racially designated legal restrictions on the ability of black citizens of Escambia County to register, vote or campaign for the County Commission . . . ."[15] There also are no formal slating organizations.[16] The percentage of eligible blacks who have registered is roughly the same as the percentage of eligible whites, i.e., 66.9% of eligible blacks and 69.7% of eligible whites.[17] Blacks constitute approximately 17% of the registered voters in Escambia.[18]

In addition, blacks in Escambia are active in the Democratic Party. Of the nine officers of the Democratic

[12]Fla. Stat. §§ 99.095(1) (1981). A person who runs as an independent candidate may gain ballot access by a petition signed by three (3) percent of the registered voters in the county. *Id.* § 99.0955 (1981).

[13]Fla. Const. art. VI, § 1; Fla. Stat. §§ 100.061, 100.091 (1981).

[14]Davis v. State *ex rel.* Cromwell, 156 Fla. 181, 23 So.2d 85 (1945).

[15]Pretrial Stipulation ¶ F (17). (J.A. 74.)

[16]*Id.* ¶ F (18). (J.A. 74.) There have been informal " 'endorsing' groups" which have endorsed both black and white candidates. *Id.*

[17]*Id.* ¶ F (1). (J.A. 68.)

[18]McMillan v. Escambia County, Fla. PCA No. 77-0432, typescript op. at 10 (N.D. Fla. July 10, 1978) (Memorandum Decision). (J.S. 80a.)

Executive Committee of Escambia, four officers – Dorothy Devault, John Reed, Cleveland Williams and William Marshall – are black; and approximately twenty (20) percent of that Committee's members are black.[19] The Democratic Party promotes equally black and white Democratic candidates who run for office in Escambia.[20] No black has run for the County Commission since 1970.[21] Between 1966 and 1970 three blacks ran for County Commission, but none was elected.[22] No other black has run for the County Commission.[23]

II. Proceedings Below.

On March 18, 1977, the named appellees filed this class action on behalf of themselves and all black citizens in Escambia against Escambia, the members of the County Commission and the Supervisor of Elections alleging that the at-large system, as designed and/or maintained, denies appellees equal access to the political process leading to nomination and election to the County Commission in violation of the first, thirteenth, fourteenth, and fifteenth amendments to the United States Constitution, section 2

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[19]Transcript at 1765-66 (testimony of A.J. Boland, Chairperson of the Escambia Democratic Executive Committee). (J.A. 550-51.) Mr. Marshall also is the Secretary-Treasurer of the Democratic Executive Committee of Florida. *Id.* at 1765 (J.A. 550); *Id.*, under separate cover, at 17 (testimony of William Marshall). Mr. Marshall testified that approximately forty (40) percent of the members of the Escambia Democratic Executive Committee are black. *Id.* at 33-34. (J.A. 384-85.)

[20]*Id.* at 20.

[21]Pretrial Stipulation ¶ F (20). (J.A. 74-75.)

[22]*Id.* One candidate, John Reed, ran twice – once in 1966 and once in 1970. *Id.*

[23]*Id.*

of the Voting Rights Act of 1965[24] and 42 U.S.C. § 1983 (1976).[25] As relief, appellees sought a declaratory judgment that the at-large election system violates the aforementioned constitutional and statutory provisions, an order enjoining appellants from holding elections under the at-large system, an order imposing a single-member district election system and an award of attorneys' fees and other costs.[26] Between May 15, 1978, and May 25, 1978, a non-jury trial was held before the Honorable Winston E. Arnow, and on July 10, 1978, the court entered a Memorandum Decision[27] and a Judgment[28] in favor of appellees.

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[24]42 U.S.C. § 1973 (1976).

[25]Compl. ¶¶ II, IV, V(H). (J.A. 46, 47, 49-50.) Appellees sued the County Commissioners and the Supervisor of Elections in their individual and official capacities.

[26]*Id. ad damnum* clause. (J.A. 50-51.)

[27]McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D.Fla. July 10, 1978). (J.S. 71a.)

[28]McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D. Fla. July 10, 1978). (J.S. 114a.) (Unless otherwise noted, further citations to the court's actions on July 10, 1978, are to the Memorandum Decision and not to the Judgment.)

Trial of this suit was consolidated with trial of Jenkins v. City of Pensacola, Fla., PCA No. 77-0433 (N.D.Fla. July 10, 1978), which was filed on the same day as *McMillan*. Plaintiffs in *Jenkins* made virtually the same allegations with respect to elections for the Pensacola City Council as appellees herein made with respect to elections for the County Commission and Escambia School Board. The court's July 10, 1978 decision held for plaintiffs in both the *McMillan* and *Jenkins* suits. The *Jenkins* suit has been resolved, Jenkins v. City of Pensacola, Fla., 638 F.2d 1249 (5th Cir. 1981), *appeal* and *petition for cert. dismissed per stipulation*, 453 U.S. 946 (1981); McMillan v. Escambia County, Fla., 638 F.2d 1239 (5th Cir. 1981), *appeal* and *petition for cert. dismissed per stipulation sub nom.* City of Pensacola, Fla. v. Jenkins, 453 U.S. 946 (1981) (J.S. 1a), and is not part of this appeal.

In reaching its decision, the court based its analysis initially on the criteria set forth by the Fifth Circuit in *Zimmer v. McKeithen*[29] for determining the existence of vote dilution (the "*Zimmer* factors").[30] With respect to the primary *Zimmer* factors, the court found that there are no slating organizations which prevent blacks from participating in the election system, that "[a]ctive efforts are made to encourage" eligible blacks and whites alike to register and to vote, that "there is no significant difference between blacks and whites in that respect" and that white candidates desire and "actively seek" the support of blacks.[31] However, the court determined that blacks are denied access to the political process because it found that there is a pattern of bloc voting, that the provision for the payment of the filing fee and committee assessment frustrates blacks and that, when they have run, blacks have lost.[32] The court also found that "[p]ast discrimination has helped create bloc voting."[33] As to the remaining, primary *Zimmer* factors, the court found the County

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[29]485 F.2d 1297 (5th Cir. 1973), *aff'd on other grounds sub nom.* East Carroll Parish School Bd. v. Marshall, 424 U.S. 636 (1976).

[30]The *Zimmer* factors are divided into two categories – "primary factors" and "enhancing factors." The primary factors are: lack of minority access to the candidate selection process; unresponsiveness of the elected officials to the interests of the minority; a tenuous state policy favoring at-large elections; and the existence of past discrimination which precludes the minority from participating in the election system. *Id.* at 1305. The enhancing factors are: the existence of large districts; the presence of a majority vote requirement; the existence of an anti-single shot voting provision; and the absence of a provision for candidates to run from geographical subdistricts. *Id.*

[31]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 10, 15, 20 (N.D.Fla. July 10, 1978). (J.A. 79a-80a, 84a, 90a.)

[32]*Id.* at 10-12. (J.S. 79a-82a.)

[33]*Id.* at 17. (J.S. 86a-87a.)

Commissioners generally to be responsive to the needs of blacks[34] and the policy underlying the preference for the at-large system to be tenuous[35].

With respect to the enhancing *Zimmer* factors, the court acknowleged the existence of the residency requirement, the majority vote requirement in the general election and the absence of an anti-single shot voting provision.[36] However, the court found that no one in recent history had won a general election without a majority and that, even though there is no anti-single shot voting provision, candidates run for numbered places, which renders blacks unable to concentrate their votes in a large field of candidates.[37] The court also determined that Escambia is "geographically large."[38] Taken in the aggregate, the court found that the *Zimmer* factors showed a dilution of black voting strength.[39]

Next, the court examined the issue of intent and resolved that "no discriminatory intent can be found as a motivating factor behind the 1901 amendment" to the Florida Constitution requiring at-large elections.[40]

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[34]*Id.* at 15, 19. (J.S. 84a-85a, 88a.) Appellees stipulated to appellants' responsiveness in the following areas: water; sewers; traffic control; fire hydrants; mosquito control; library services; ambulance service; garbage collection and disposal; drainage planning; housing; and corrections. Pretrial Stipulation ¶ F(22). (J.A. 76a.)

[35]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 16-17 (N.D. Fla. July 10, 1978). (J.S. 86a.) This finding was based on the identical considerations as, and was subsumed in, the court's finding on intent, which is discussed at 9-10 *infra*. *Id.*

[36]*Id.* at 18. (J.S. 87a-88a.) The Court noted that there is a majority vote requirement in the primaries. *Id.*

[37]*Id.*

[38]*Id.*

[39]*Id.* at 19. (J.S. 89a.)

[40]*Id.* at 25. (J.S. 93a.)

However, the court reached a different result as to the current maintenance of the at-large system. The court based this finding primarily on the County Commissioners' responses to the recommendations of two charter committees, appointed by the County Commission in 1975 and 1977, that county commissioners should be elected from single-member districts.[41] The court observed that the County Commissioners testified at trial that they did not include either recommendation in a 1977 charter referendum because they believed that commissioners elected at-large would be more responsive to the needs of Escambia as a whole than would commissioners elected from single-member districts.[42] In addition, the court noted that, in their post-trial memorandum, appellants "admit[ted]" that the rejection of the single-member district proposals reflected the Commissioners' desire to retain their incumbency.[43] Based on this evidence, the court determined that the County Commissioners were responsible for retaining the at-large system and, "bolstered by the findings under the *Zimmer* factors," drew the "inference" that the Commissioners' actions were motivated in part by the possibility that, in future elections under a single-member district system, one or more of them might be replaced by blacks.[44]

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[41]The committee appointed in 1975 proposed a seven-member county commission with five members to be elected from single-member districts and two members to be elected at-large. Charter Government Study Committee Report at 3 (Plaintiffs' Exhibit 98). (J.A. 1165.) The committee appointed in 1977 proposed a five-member county commission with all members to be elected from single-member districts. Charter Government Study Committee Report at 3 (Plaintiffs' Exhibit 100). (J.A. 1233.)

[42]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 29 (N.D. Fla. July 10, 1978). (J.S. 96a-97a.)

[43]*Id.* at 30. (J.S. 98a.)

[44]*Id.* at 31. (J.S. 98a.)

In sum, the court concluded that "the preponderance – though not an overwhelming preponderance – of the evidence"[45] showed that the at-large system for elections to the County Commission "effectively dilutes the votes of black citizens" and "is being maintained at least in part for discriminatory reasons"[46]. As a result, the court held that the system violates the fourteenth and fifteenth amendments to the Constitution as well as section 2 of the Voting Rights Act of 1965.[47] As relief, the court directed the parties to submit proposals to remedy the dilution which the court found to exist.[48]

On August 9, 1978, appellants filed a Notice of Appeal of the court's July 10, 1978 decision. Thereafter, the County Commission adopted and submitted to the court as a remedy an ordinance reapportioning the county commissioners' districts to provide a district with a black population and registered voter majority and establishing an election system to provide a seven-member county commission with five members to be elected from single-member districts and two members to be elected at-large.[49] Appellees proposed a remedy which reapportioned the county commissioners' districts differently from appellants' plan, but also provided for a district in which blacks comprised a majority of the population, and pro-

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[45] *Id.* at 35. (J.S. 103a.)

[46] *Id.* at 32. (J.S. 99a-100a.)

[47] McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 32, 34 (N.D.Fla. July 10, 1978). (J.S. 100a, 101a.)

[48] *Id.* at 38 (J.S. 105a); McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (N.D.Fla. July 10, 1978) (Judgment). (J.S. 114a.)

[49] Notice of Adoption of Ordinance Amending Election Plan exh. (R. 1250.)

vided for a five-member county commission with all commissioners to be elected from single-member districts.[50]

During this time, the people of Escambia again were considering a change to a charter form of government. As a result, the court postponed consideration of the remedy until the proposed form of charter government became known.[51] The charter commission proposed, inter alia, a seven-member county commission with five members to be elected from single-member districts and two members to be elected at-large;[52] and a referendum election on the charter was scheduled for November 6, 1979.

On September 24, 1979, the court issued a Memorandum Decision giving tentative approval to the election system contained in the charter proposal.[53] In its opinion, the court compared appellants' proposed remedy with the charter proposal and observed that the two plans were "strikingly similar."[54] However, based on its interpretation of *Wise v. Lipscomb*,[55] the court disapproved ap-

[50]Plaintiffs' Submission of Districting Plan for the County Commission and School Board at 1. (R. 1209.)

[51]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (N.D.Fla. Sept. 24, 1979) (Memorandum Decision). (J.S. 66a.)

[52] Notice of Proposed County Charter app. § 301. (J.A. 91.)

[53]McMillan v. Escambia County, Fla. PCA No. 77-0432 (N.D. Fla. Sept. 24, 1979). (J.S. 66a.)

[54]*Id.* at 2. (J.S. 67a.)

[55]437 U.S. 535 (1978). The issue in *Wise* was whether a proposed remedy providing for an election system with a mixture of single-member and at-large districts, which the Dallas City Council had adopted in response to a declaratory judgment that the existing at-large system was unconstitutional, was a judicially imposed or a legislatively enacted remedy. This determination was necessary because the Court previously had indicated that, when a court holds unconstitutional an existing election system, it is held to a higher stan-

pellants' proposal.[56] The court reasoned that the Florida Constitution prohibits any system of electing county commissioners other than the at-large system which the court already had held unconstitutional and that the Florida Constitution limits the powers of the County Commission to those the Florida Legislature provides by general or special law.[57] Therefore, the court also held that, under *Wise*, the County Commission lacked the power to adopt a "legislative plan," and that, in the event the charter proposal were rejected, the remedy the court would impose would be treated as judicially created and only would provide for single-member districts.[58]

On November 6, 1979, the referendum was held, and the voters rejected the charter proposal.[59] On December 3,

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dard in fashioning a remedy than is a legislature. *Id.* at 540-41 (White, J.). That higher standard requires a court, absent special circumstances, to devise an election system comprised exclusively of single-member districts. *Id.* In *Wise*, the Court upheld the election system the Dallas City Council adopted because a majority of the Court agreed that it was a "legislative plan."

[56]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 3 (N.D. Fla. Sept. 24, 1979). (J.S. 68a.) In addition, the court indicated its disapproval of appellants' proposed remedy because it would not have resulted in blacks' being represented in proportion to their percentage of the population but, rather, would have assured them of only 14.3% of the seats on the county commission. *Id.* at 4-5. (J.S. 69a-70a.) Even though the charter proposal also would have resulted in the same proportion of representation for blacks, the court gave tentative approval to that proposal because appellees did not object to it. *Id.* at 5. (J.S. 70a.)

[57]*Id.* at 3. (J.S. 68a.)

[58]*Id.*

[59]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (N.D. Fla. Dec. 3, 1979) (Memorandum Decision). (J.S. 54a.)

1979, the Court issued a Memorandum Decision[60] and an Order,[61] imposing its election system and reapportionment plan. The election system provided for a five-member county commission with all of the members to be elected from single-member districts.[62] The boundaries for the county commissioners' districts were the same boundaries the court had adopted for the Escambia school board districts.[63] The court's Order also provided that, following each decennial census, the county commission was to reapportion the county commissioners' districts to comply with the one-person, one-vote requirement and the orders of the court.[64] Finally, pursuant to section 3 of the Voting Rights Act of 1965,[65] the court retained jurisdiction over the suit for a period of five years.[66]

On January 3, 1980, appellants filed a Notice of Appeal of the court's December 3, 1979 decision, and on January 23, 1980, moved the district court for a stay pending ap-

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[60]McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D. Fla. Dec. 3, 1979). (J.S. 54a.)

[61]McMillan v. Escambia County Fla., PCA No. 77-0432 (N.D.Fla. Dec. 3, 1979). (J.S. 59a.)

[62]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1-2 (N.D. Fla. Dec. 3, 1979) (Memorandum Decision) (J.S. 54a-55a); McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (N.D. Fla. Dec. 3, 1979) (Order) (J.S. 59a).

[63]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1-2 (N.D. Fla. Dec. 3, 1979) (Memorandum Decision) (J.S. 55a); McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1 (N.D. Fla. Dec. 3, 1979) (Order) (J.S. 59a).

[64]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 2 (N.D. Fla. Dec. 3, 1979). (J.S. 60a.)

[65]42 U.S.C. § 1973a (1976).

[66]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 3 (N.D.Fla. Dec. 3, 1979). (J.S. 61a.)

peal of elections under the December 3, 1979 Order. On February 15, 1980, the court denied the motion,[67] and on February 22, 1980, appellants filed a Notice of Appeal of the denial. Also on February 22, 1980, appellants moved the Fifth Circuit for a stay pending appeal of the district court's December 3 Order. On March 10, 1980, the Fifth Circuit stayed that Order.[68]

On February 19, 1981, the Fifth Circuit rendered its decision in *McMillan v. Escambia County, Florida* (*"McMillan I"*)[69] reversing that part of the district court's July 10, 1978 decision concerning the at-large system of electing Escambia's county commissioners. In so doing, the court first held that the district court had applied the correct legal standard applicable to vote dilution cases because the court had recognized that proof of discriminatory intent is a requirement in such cases and had made specific findings concerning intent separate from, and in addition to, its *Zimmer* findings.[70] With respect to the district court's findings, the Fifth Circuit agreed that racial considerations were not a factor behind the enactment of the 1901 amendment to the Florida Constitution requiring at-large elections.[71] However, the court

[67]McMillan v. Escambia County, PCA No. 77-0432 (N.D.Fla. Feb. 15, 1980) (Order). (J.A. 1261.)

[68]McMillan v. Escambia County, Fla., No. 78-3507 (5th Cir. Mar. 10, 1980) (Order). That Order also consolidated for oral argument and disposition appellants' earlier appeal of the district court's July 10, 1978 Judgment, as well as the appeals of the district court's July 10, 1978 Judgments with respect to the Escambia School Board and the Pensacola City Council.

[69]638 F.2d 1239 (5th Cir. 1981). (J.S. 30a.) The Fifth Circuit affirmed those parts of the district court's decision concerning the election systems for the Escambia School Board and the Pensacola City Council. *Id.*

[70]*Id.* at 1243. (J.S. 39a.)

[71]*Id.* at 1244. (J.S. 40a-41a.)

disagreed that appellants were maintaining the at-large system for discriminatory purposes.

The court reviewed the record and "found no evidence of racial motivation by the county commissioners in retaining the at-large system."[72] As to the expression by the Commissioners of the desire to retain their incumbency, the court reasoned that "the desire to retain one's incumbency unaccompanied by other evidence ought not to be equated with an intent to discriminate against blacks *qua* blacks."[73] The court observed that the Commissioners testified that "'good government'" reasons, not race, motivated them to delete from the charter referendum proposals for single-member districts and that appellees introduced no evidence to the contrary.[74] The court admonished that "[t]he trial judge, of course, was entitled not to believe the commissioners' testimony; in the absence of contradictory evidence, however, disbelief of that testimony is not sufficient to support a contrary finding."[75] Because there was no contradictory evidence, the Fifth Circuit held that "the evidence falls short 'of showing that the appellants 'conceived or operated [a] purposeful [device] to further racial discrimination.' ' "[76] Accordingly, the court reversed the portion of the district court's opinion invalidating the at-large system of electing

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[72] *Id.* at 1245. (J.S. 42a.)

[73] *Id.* (J.S. 42a-43a.)

[74] *Id.* at 1244-45. (J.S. 41a-43a.)

[75] *Id.* at 1245. (J.S. 43a.)

[76] *Id.* at 1245 (quoting City of Mobile, Ala. v. Bolden, 446 U.S. 55, 66 (1980) (quoting Whitcomb v. Chavis, 403 U.S. 124, 149 (1971))). (J.S. 43a.)

Escambia's county commissioners.[77] In a separate decision, *McMillan v. Escambia County, Florida ("McMillan II"),*[78] the court, based on its decision in *McMillan I,* vacated the December 3, 1979 remedy the district court had ordered.

Thereafter, on April 1, 1981, appellees filed a Petition for Rehearing and a Suggestion of Rehearing En Banc. While the Petition and Suggestion were pending, the 1980 census was published; and on December 22, 1981, the County Commission, pursuant to Fla. Const. art. VIII, § 1(e); Fla. Stat. § 124.01 (1981), reapportioned the county commissioners' districts.[79] Also while the Petition and Suggestion were pending, this Court received briefs, and heard argument, in *Rogers v. Lodge*[80]. The Fifth Circuit stayed consideration of appellees' Petition and Suggestion pending the decision in *Rogers* and, following that decision, requested the parties to submit briefs on the ef-

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[77]The Fifth Circuit's analysis and decision was based entirely on the fourteenth amendment. The court rejected appellees' claims under the fifteenth amendment and section 2 of the Voting Rights Act of 1965. The court reasoned that, in City of Mobile, Ala. v. Bolden, 446 U.S. 55 (1980), a plurality of this Court had held that section 2 "has an effect no different from that of the Fifteenth Amendment," 446 U.S. at 61, and that, even assuming section 2 allowed a private right of action, appellees could not succeed under that section unless they also could succeed under the fifteenth amendment. 638 F.2d at 1242 n.8. (J.S. 37a.) The court adopted the *Bolden* plurality's view that the fifteenth amendment does not apply to vote dilution claims. *Id.* at 1243 n. 9. (J.S. 38a.)

[78]638 F.2d 1249 (5th Cir. 1981). (J.S. 52a.)

[79]Minutes of December 22, 1981 County Commission Meeting at 5-6. Article VIII, § 1(e) of the Florida Constitution and section 124.01 of the Florida statutes require the county commissioners' districts to be apportioned according to the one person, one vote principle.

[80]457 U.S. ____, 102 S.Ct. 3272 (1982).

fect of *Rogers*. Without other briefing and without oral argument, on September 24, 1982, the court granted appellees' Petition for Rehearing and, based on *Rogers*, vacated the portion of its decision in *McMillan I* concerning elections to the County Commission and its decision in *McMillan II* and substituted therefor its decision in *McMillan v. Escambia County, Florida ("McMillan III")*.[81]

The court first examined the impact of *Rogers* and observed that, in *Rogers*, the Court reaffirmed the holding of a majority in *City of Mobile, Alabama v. Bolden*[82] that evidence of discriminatory purpose is necessary to sustain a challenge to an election system under the equal protection clause of the fourteenth amendment.[83] The court also determined that *Rogers* gave more significance to the *Zimmer* factors and greater deference to the findings of a district court than did the *Bolden* plurality.[84] In view of these determinations and the determination that, consistent with *Rogers*, the district court had not limited its inquiry to the *Zimmer* factors, the court held that the district court had applied the proper legal standard applicable to vote dilution cases.[85]

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[81]688 F.2d 960 (5th Cir. 1982). (J.S. 1a.) On October 22, 1982, the court denied appellees' suggestion of en banc consideration. McMillan v. Escambia County, Fla., Nos. 78-3507, 80-5011 (5th Cir. Oct. 22, 1982).

[82]446 U.S. 55 (1980).

[83]*McMillan III*, 688 F.2d at 964. (J.S. 10a-11a.)

[84]*Id.* at 964-965. (J.S. 11a-12a.)

[85]*Id.* at 965. (J.S. 12a-13a.) The court indicated that the district court had gone beyond the *Zimmer* factors by looking into, and drawing an inference from, the County Commission's responses to the single-member district proposals. *Id.* (J.S. 13a.)

The court then reiterated the district court's findings and concluded that, under *Rogers*, it could not "say the district court's finding of intent was clearly erroneous."[86] Therefore, the court upheld the district court's July 10, 1978 decision invalidating Florida's constitutional provision for elections to the County Commission. As a result, the court next addressed the remedy the district court had imposed. The court agreed with the district court's analysis of the remedy issue, held that the remedy the district court had ordered was within that court's discretion, and, accordingly, affirmed the December 3, 1979 Order.[87]

Due to the passage of time between the December 3, 1979 Order and the decision in *McMillan III*, the Fifth Circuit remanded the case to the district court with instructions to revise the scheduling terms of the remedial

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[86] *Id.* at 965-69. (J.S. 13a-22a.) The court did not address appellees' arguments based on amended section 2 of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973 (West Supp. 1983), because it had not afforded appellants the opportunity to respond to those arguments. *McMillan III*, 688 F.2d at 961 n. 2. (J.S. 3a.) The court also did not address appellees' fifteenth amendment claims. *Id.* However, the court concluded that *Rogers*, which did not address either the fifteenth amendment or amended section 2, provided "no basis for departing from the *Bolden* plurality's analysis." *Id.*

[87] *Id.* at 969-73. (J.S. 22a-29a.) Specifically, the court agreed with the distinction the district court drew between this case and *Wise*. The court reached this result by adopting the analysis of Justice White, joined in by Justice Stewart, rather than the analysis of Justice Powell, joined in by Chief Justice Burger and Justices Blackmun and Rehnquist, because, in the court's view, the analysis of Justice White controlled the outcome of the suit. *Id.* at 972. (J.S. 28a.) Based on this analysis, the court determined that the Florida Constitution limits the power of the County Commission to the powers specifically authorized by state law which powers do not include the power to adopt a remedial election system. *Id.* (J.S. 29a.) Accordingly, the court concluded that the County Commission lacked the power to adopt such a system. *Id.*

Order.[88] On April 18, 1983, this Court noted probable jurisdiction over appellants' appeal of the Fifth Circuit's decision in *McMillan III*.[89]

SUMMARY OF ARGUMENT

The Fifth Circuit misinterpreted this Court's decision in *Rogers*. The legal standard applicable to constitutional vote dilution cases this Court articulated in *Rogers* is the same standard the plurality enunciated in *Bolden* and the Fifth Circuit applied in *McMillan I*. The opinion in *Rogers* also does not accord greater deference to district court findings than the plurality opinion in *Bolden*. The Fifth Circuit, therefore, should not have granted rehearing.

Further, the Fifth Circuit erred in its application of the clearly erroneous standard of Fed. R. Civ. P. 52(a) to the

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[88] *Id.* at 973. (J.S. 29a.) The Fifth Circuit denied appellants' suggestion of rehearing en banc, McMillan v. Escambia County, Fla., Nos. 78-3507, 80-5011, (5th Cir. Nov. 4, 1982) (J.S. 118a.), and appellants' motion for a stay of mandate. McMillan v. Escambia County, Fla., Nos. 78-3507, 80-5011 (5th Cir. Nov. 23, 1982); and Justice Powell denied appellants' application for stay of judgment, McMillan v. Escambia County, Fla., No. A-494 (U.S. Dec. 2, 1982).

As discussed more fully at 48 n. 172 *supra*, on remand, the district court issued a remedial Order, McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D.Fla. Mar. 11, 1983), *appeal docketed*, No. 83-3275 (11th Cir. Apr. 27, 1983), *petition for cert. before judgment filed*, 52 U.S.L.W. 3005 (U.S. July 1, 1983) (No. 82-2155), implementing its interpretation of the Fifth Circuit's mandate. Thereafter, appellants sought a stay of the Fifth Circuit's judgment and the Order the district court issued pursuant to that judgment. On May 26, 1983, Justice Powell again denied appellants' application for stay. Escambia County, Fla. v. McMillan, No. A-939 (No. 82-1295) (U.S. May 26, 1983).

[89] Escambia County, Fla. v. McMillan, ___U.S. ___, 103 S.Ct. 1766 (1983).

district court's findings. A review of the record confirms the Fifth Circuit's conclusion in *McMillan I* that there was no evidence that appellants established or maintained the at-large system of electing Escambia's county commissioners for a discriminatory purpose. Nevertheless, in *McMillan III,* the Fifth Circuit upheld the court's finding of discriminatory intent because of its mistaken conclusion that, after *Rogers*, the clearly erroneous standard precludes a reviewing court from disturbing a district court's findings.

Because there was no evidence that appellants established or maintained the at-large election system for a discriminatory purpose, the decisions of the Fifth Circuit and the district court stand as a threat to all at-large election systems. This Court repeatedly has refused to hold at-large election systems unconstitutional per se. Unless the Court now is willing to hold otherwise, the Fifth Circuit's decision must be reversed.

Moreover, neither the Fifth Circuit nor the district court heeded this Court's frequently reiterated admonition that devising election systems and reapportionment plans are legislative, not judicial, functions. Both courts below therefore, refused to consider as a "legislative plan" the remedial election system and reapportionment plan the County Commission adopted. This was due to both courts' erroneous decisions not to adopt Justice Powell's analysis in *Wise v. Lipscomb.*

Even under the analysis the courts did adopt, Justice White's analysis in *Wise,* the courts still erred in refusing to consider as a "legislative plan" the County Commission's proposed remedy. Under Florida law, non-charter county commissions have expansive powers. Nevertheless, in direct contravention of a decision by the

Florida Supreme Court, the courts below held that the powers of non-charter county commissions are circumscribed narrowly. The district court, therefore, ordered, and the Fifth Circuit upheld, the unwarranted preemption of a legislative task and the imposition of a judicially created election system and reapportionment plan.

ARGUMENT

I. The Fifth Circuit Erred in Upholding the District Court's Decision that the At-Large System of Electing Escambia's County Commissioners Violates the Fourteenth Amendment Because There Was No Evidence that the System Was Established or Maintained for a Discriminatory Purpose.

This Court's decision in *Rogers* again confirms that an at-large election system is not unconstitutional per se[90] and may not be held to violate the Constitution unless there is a finding that the system was established or is maintained for a discriminatory purpose[91]. In *McMillan III*, the Fifth Circuit recognized this to have been the import of *Rogers*.[92] However, the court went on to interpret *Rogers* incorrectly as "reflect[ing] both a more favorable view of the *Zimmer* factors and a greater deference to the finding of a district court than the analysis of the *Bolden* plurality."[93] A comparison of the Court's opinion in

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[90] 457 U.S. at ____, 102 S.Ct. at 3275-76; *accord Bolden*, 446 U.S. at 66, 102-03 (opinions of plurality, White, J.); White v. Regester, 412 U.S. 755, 765 (1973); Whitcomb v. Chavis, 403 U.S. 124, 142 (1971).

[91] 457 U.S. at ____, 102 S.Ct. at 3275-76; *accord Bolden*, 446 U.S. at 66, 102-03 (opinions of plurality, White, J.); Whitcomb v. Chavis, 403 U.S. 124, 149 (1971); *see* White v. Regester, 412 U.S. 755, 765 (1973).

[92] 688 F.2d at 964. (J.S. 10a-11a.)

[93] *Id.* (J.S. 11a.)

Rogers with the plurality's opinion in *Bolden* reveals that the Fifth Circuit's interpretation of *Rogers* was erroneous. In any event, a comparison of the Court's opinion in *Rogers* with the Fifth Circuit's opinion in *McMillan I* leaves no doubt that *Rogers* did not justify the Fifth Circuit's decision to grant rehearing and vacate its decision in *McMillan I*. Further, a review of the facts unambiguously shows that there was no evidence that appellants established or maintained the at-large election system for a discriminatory purpose.

A. The Standard This Court Articulated in *Rogers* Does Not Differ from the Standard the Plurality Enunciated in *Bolden* and, in Any Event, Does Not Differ from the Standard the Fifth Circuit Applied in *McMillan I*.

In discussing the standard of proof necessary to establish discriminatory purpose, the *Bolden* plurality concluded that "the presence of the indicia relied on in *Zimmer* may afford some evidence of a discriminatory purpose, [but] satisfaction of those criteria is not of itself sufficient proof of such a purpose."[94] In *Rogers*, the Court rejected the argument that the district court's judgment was infirm because that court had employed the *Zimmer* factors. In upholding the Fifth Circuit's conclusion that the district court had applied the proper legal standard, this Court explained:

> The District Court . . . demonstrated its understanding of the controlling standard by observing that a determination of discriminatory

[94] 446 U.S. at 73. The plurality concluded that the presence of the *Zimmer* factors only may establish discriminatory effect. *Id.* at 71-73; *accord Rogers*, 457 U.S. at ____, 102 S.Ct. at 3277.

> intent is 'a requisite to a finding of unconstitutional vote dilution' under the Fourteenth and Fifteenth Amendments . . . . Furthermore, while recognizing that the evidentiary factors identified in *Zimmer* were to be considered, the District Court was aware that it was 'not limited in its determination only to the *Zimmer* factors' but could consider other relevant factors as well . . . . For the most part, the District Court dealt with the evidence in terms of the factors set out in *Zimmer* and its progeny, but as the Court of Appeals stated: 'Judge Alaimo employed the constitutionally required standard . . . . [and] did not treat the *Zimmer* criteria as absolute, but rather considered them only to the extent they were relevant to the question of discriminatory intent.'[95]

As is apparent, the opinions of the *Bolden* plurality and the Court in *Rogers* reflect the same view of the *Zimmer* factors. Those factors are relevant to a finding of discriminatory intent, but, alone, the presence of an aggregate of those factors may not establish such an intent. Both opinions require the trial court to consider and find present relevant evidence other than the *Zimmer* factors. Hence, rather than reflecting a more favorable view of the *Zimmer* factors, the distinction between *Bolden* and *Rogers* is that, in *Bolden,* the district court limited its inquiry to the *Zimmer* factors whereas, in *Rogers,* the court went beyond, and found present evidence other than, the *Zimmer* factors.[96] The Fifth Circuit erred in otherwise concluding.

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[95] *Rogers,* 457 U.S. at ____, 102 S.Ct. at 3278 (citations omitted).

[96] *Compare Bolden,* 455 U.S. at 71-73, *with Rogers,* 457 U.S. at ____, ____, 102 S.Ct. at 3278, 3280.

Moreover, even assuming arguendo that the view of the *Zimmer* factors the Court conveyed in *Rogers* is more favorable than that expressed in *Bolden*, the view conveyed in *Rogers* is the same as that expressed in *McMillan I*. This may be explained by the fact that, as the above quotation indicates, the view expressed in *Rogers* was derived largely from the Fifth Circuit's opinion in *Lodge v. Buxton*,[97] which opinion was rendered just twenty-nine (29) days after the Fifth Circuit's opinion in *McMillan I*. In *McMillan I*, the Fifth Circuit concluded that "[f]ortunately, the district court below correctly anticipated that the *Arlington Heights* requirement of purposeful discrimination must be met, and thus made explicit findings concerning intent in addition to and apart from its *Zimmer* findings."[98] Comparing this conclusion with the above quotation from *Rogers* confirms that the Court in *Rogers* and the Fifth Circuit in *McMillan I* treated identically the relationship of the *Zimmer* factors to a finding of discriminatory intent. Accordingly, the portion of the *Rogers* decision which addresses the probative value of the *Zimmer* factors did not furnish the Fifth Circuit a valid basis for vacating the portion of its decision in *McMillan I* concerning the County Commission and substituting therefor its decision in *McMillan III*.

Similarly, the Fifth Circuit's unexplained conclusion in *McMillan III* that the Court's opinion in *Rogers* gives greater deference to the findings of a district court than the plurality's opinion in *Bolden* also was incorrect. In *Rogers*, the Court simply reiterated the requirement of Fed.R.Civ. P. 52(a) that a reviewing court is not to set aside the findings of fact of a district court unless those

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[97] 639 F.2d 1358 (5th Cir. 1981), *aff'd. sub nom. Rogers.*

[98] 638 F.2d at 1243. (J.S. 39a.)

findings are clearly erroneous.[99] That requirement, however, was in effect and governed review of district court findings long before the decision in *Bolden*.[100] Because the *Bolden* plurality concluded that, by failing to consider factors other than the *Zimmer* factors, the district court had applied the incorrect legal standard, it was unnecessary for the plurality to address expressly the deference to be given the findings of the district court. However, in view of the basis for the plurality's opinion and the length of time the clearly erroneous standard had been in effect, there were no grounds for the Fifth Circuit to conclude that the Court in *Rogers* accorded greater deference to district court findings than the plurality in *Bolden*.

B. There Was No Evidence that the At-Large Election System Was Established or Maintained for a Discriminatory Purpose, and the District Court's Finding to the Contrary, Therefore, Was Clearly Erroneous.

The Fifth Circuit erred not only in concluding that this Court's decision in *Rogers* reflects a more favorable view of the *Zimmer* factors and a greater deference to the findings of the district court than the plurality's opinion in *Bolden* but also erred in its application of the clearly erroneous standard to the district court's findings. That standard does not insulate a district court's findings from appellate review. While those findings are entitled to deference, they must be set aside as clearly erroneous if, "although there is evidence to support . . . [them], the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been com-

[99] 457 U.S. ____, 102 S.Ct. at 3278-79.

[100] *See, e.g.*, United States v. United States Gypsum Co., 333 U.S. 364, 394-95 (1948).

mitted."[101] A review of the evidence, together with a comparison of that evidence to the dramatically different facts necessary to sustain the district court's findings in *Rogers*, reveal that the district court committed a mistake in finding that appellants were maintaining the at-large election system for a discriminatory purpose.[102]

1. The Provision for Escambia's County Commissioners To Be Elected At-Large Is a Requirement of the Florida Constitution; Hence, Appellants Were and Are Not Responsible for that Provision.

The provision for Escambia's county commissioners to be elected at-large is, and always has been, a requirement of Florida's Constitution. There is no evidence in the record to show that appellants in any way were responsible for the enactment of that state constitutional provision.[103] Moreover, any change in that provision would require an amendment to Florida's Constitution, a process over

[101]United States v. United States Gypsum Co., 333 U.S. 364,395 (1948); *accord, e.g.*, Kelley v. Southern Pacific Co., 419 U.S. 318, 322-23 (1974); Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 123 (1949).

[102]In addition to the comparison set forth at 33-39 *infra*, the amici curiae brief filed by the State Association of County Commissioners of Florida, Inc. and numerous non-charter counties in Florida in support of this appeal provides a factual comparison of Escambia and Burke County, Georgia, the county whose at-large election system was challenged in *Rogers*. Motion for Leave To File and Brief of Amici Curiae State Association of County Commissioners, Inc. and the Undersigned Non-Charter Counties of the State of Florida in Support of Appeal at 9-13.

[103]The district court's opinion recognizes that appellants were not responsible for the creation of the at-large system of electing county commissioners. *See* McMillan v. Escambia County, Fla. PCA No. 77-0433 typescript op. at 23-25 (N.D. Fla. July 10, 1978). (J.S. 92a-93a.)

which appellants have no control.[104] Appellees not only failed to name as parties those persons or entities arguably responsible for the state constitutional requirement of at-large elections, e.g., the State of Florida, the Governor of Florida or the Florida Legislature and its members, but also failed to offer any evidence, and the court failed to find, that the constitutional provision is being maintained for a discriminatory purpose.[105] For this reason, alone, the court's finding that appellants were maintaining the at-

[104] *See* Fla. Const. art. XI (procedures for amending Florida's Constitution).

[105] The absence of any causal connection between appellants and the harm appellees have alleged raises the issue whether appellees' allegations even satisfy the "case or controversy" requirement of U.S. Const. art. III, § 2, cl. 1, necessary to the exercise of a federal court's subject matter jurisdiction. In response to appellees' Complaint, appellants answered, by way of affirmative defenses, that they were not responsible for the at-large system of electing county commissioners and that the State of Florida, the Department of State of Florida and the Governor of Florida were necessary parties. Answer and Affirmative Defenses – Escambia County at 3. (J.A. 52.) By letter dated August 4, 1977, the court, without explanation, rejected appellants' contention that the State, Department of State and Governor were necessary parties. (J.A. 56.) Although the issue was not pressed on appeal, this Court often has stressed that, even if not previously raised by the parties, issues pertaining to a court's subject matter jurisdiction may be raised and decided at any stage of the proceedings. *E.g.*, Butler v. Dexter, 426 U.S. 262, 263 n. 2 (1976); Philbrook v. Glodgett, 421 U.S. 707, 721 (1975); Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan, 111 U.S. 379, 382 (1884); M'Kinney v. Carroll, 37 U.S. (12 Peters) 66, 68 (1838).

As recently interpreted by this Court,

> Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99 . . . (1979), and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision,' *Simon v. Eastern*

large system of electing Escambia's county commissioners was clearly erroneous.

2. Racial Considerations Play No Role in the County Commissioners' Preference for the At-Large System.

Rather than focusing on those actually responsible for maintenance of Florida's constitutional requirement of at-large elections, the court, instead, focused its inquiry entirely on appellants. Although the court did not explain why it took this approach, presumably it did so because Fla. Const. art. VIII, § 1(c); Fla. Stat. §§ 125.60-.64 (1981) allow Florida's counties to adopt and be governed by a charter which, inter alia, provides for an election system other than the at-large system the Florida Constitution requires.[106] Even if the court were correct in taking this approach, the record does not support the findings the court made with respect to appellants to support its findings of discriminatory intent.

With one exception, the district court limited its inquiry to the *Zimmer* factors.[107] That exception was the County Commission's decision not to include in a charter referen-

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Kentucky Welfare Rights Org., 426 U.S. 26, 38, 41 . . . (1976).

Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 472 (1982); *accord, e.g.*, Watt v. Energy Action Educational Foundation, 454 U.S. 151, 161 (1981); Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 261 (1977). Those who fail to make such a showing "may not litigate as suitors in the courts of the United States." *Valley Forge*, 454 U.S. at 475-76. Appellants failed to make such a showing, and, therefore, the decisions below cannot stand.

[106]Sixty-two (62) of Florida's sixty-seven (67) counties have remained non-charter counties.

[107]*McMillan III*, 688 F.2d at 965. (J.S. 13a.)

dum a proposal for county commissioners to be elected from single-member districts. The County Commissioners who testified at trial stated that that decision was based on their conviction that the at-large election system is best for Escambia because there are issues which transcend district lines and, under an at-large system, commissioners must represent the interests of the county as a whole whereas, under a single-member district system, commissioners would tend to represent only the interests of their respective districts.[108] As the Fifth Circuit pointed out in its decision in *McMillan I*, and did not dispute in *McMillan III*, "the plaintiffs introduced no evidence to the contrary."[109] Following the trial, the Commissioners indicated that their decision also reflected the desire to retain their incumbency.[110] As the Fifth Circuit further pointed out in *McMillan I* and reiterated in *McMillan III*, the "desire to maintain one's incumbency does not equal racially discriminatory intent."[111]

The district court, however, did equate the County Commissioners' decision with discriminatory intent: "To this court the reasonable inference to be drawn from their actions in retaining at-large districts is that they were motivated, at least in part, by the possibility single district elections might result in one or more of them being displaced in subsequent elections by blacks."[112] Apart

[108]Transcript at 1478, 1500-01, 1517-18, 1558-59 (testimonies of Commissioners Beck, Kelson, Deese and Kenney respectively). (J.A. 481, 497-98, 510-11, 540.)

[109]638 F.2d at 1245. (J.S. 43a.)

[110]Defendants' Post-Trial Memorandum at 18. (R. 950.)

[111]*McMillan III*, 688 F.2d at 969 n. 19 (J.S. 20a); *accord McMillan I*, 638 F.2d at 1245 (J.S. 42a-43a); *see also Rogers*, 457 U.S. at ____, 102 S.Ct. at 3292 (Stevens, J., dissenting).

[112]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 31 (N.D. Fla. July 10, 1978) (footnote omitted). (J.S. 98a.)

from other considerations, the court's "inference" defies logic. The court noted that, under a single-member district election system, the district lines could be gerrymandered to produce, at most, one district with a black majority.[113] Assuming, as the court found, that blacks vote as a bloc for black candidates,[114] only one of five commissioners arguably would need to be concerned about being replaced by a black. The other four commissioners would not share such a concern; and the court's inference of discriminatory purpose may not be explained by the unanimous support of all five County Commissioners for the at-large system.[115]

Moreover, the district court's emphasis on the County Commission's decision not to include in the charter referendum a proposal for a single-member district election system is misplaced. The County Commission, of course, does not have the power to adopt a charter. Rather, this power lies with the people of Escambia.[116] As the court observed, the 1977 charter referendum, without a provision for county commissioners to be elected at-large, was defeated.[117] Appellees did not attempt to show,

[113] *Id.* n.10. (J.S. 98a.)

[114] *Id.* at 13. (J.S. 82a.)

[115] It is noteworthy that the charter commissions' recommendations for a single-member district election system were not prompted by complaints by blacks that the at-large system was diluting their voting strength. Commissioner Tennant, who, prior to becoming a county commissioner, served on the County Commission's charter commissions, testified that the overriding reason the charter commissions favored a single-member district election system was "economics," i.e. the charter commission simply was looking for possible ways to reduce the costs of running for office. Transcript at 577-78, 587, 591-92. (J.A. 312-13, 319, 322-23.)

[116] Fla. Const. art. VIII, § 1(c); Fla. Stat. §§ 125.60-125.64 (1981).

[117] McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 29 (N.D. Fla. July 10, 1978). (J.S. 96a.)

and the court did not find, that the defeat of the charter referendum was in any way related to the County Commission's exclusion of a proposal for a single-member district election system. Indeed, any such assertion would be unwarranted because, on November 6, 1979, after the trial, the people of Escambia voted on and defeated a charter referendum which, inter alia, provided for a seven-member county commission with five members to be elected from single-member districts.[118] Under these circumstances, it is apparent that racial considerations explain neither why the County Commission supported the at-large election system nor why Escambia's county commissioners continued to be elected under the at-large system Florida's Constitution requires.

As previously discussed, the County Commission's decision not to include in a charter referendum a proposal for a single-member district election system was the only non-*Zimmer* factor the district court considered. If, as *Rogers* established, the presence of an aggregate of the *Zimmer* factors, alone, is insufficient to establish discriminatory intent and the only non-*Zimmer* factor shows an absence of such intent, the district court's finding that appellants were maintaining the at-large system of electing Escambia's county commissioners for a discriminatory purpose necessarily must be clearly erroneous; and further inquiry should be unnecessary. However, assuming arguendo that consideration of the *Zimmer* factors is necessary, the district court's findings thereunder also were clearly erroneous.

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[118] *See supra* p. 13.

3. Blacks in Escambia Have Equal Access to the Candidate Selection Process, Are Able To Participate Fully and Equally in All Aspects of the Political Process, and Appellants Are Responsive to the Needs of Escambia's Black Citizens.

Unlike *Rogers,* where the court found that blacks always had been a "substantial majority" of the population," but, due primarily to the effects of past discrimination, a "distinct minority" of the registered voters,[119] blacks in Escambia constitute approximately the same percentage of the registered voters as they constitute percentage of the population[120]. Further, the parties agreed, and the court found, that blacks and whites register to vote at approximately the same rate and that there are no slating organizations which prevent blacks from participating in the election system.[121] Indeed, the court found that "[a]ctive efforts are made to encourage eligible citizens, both black and white, to register and to vote . . . . [and t]oday there is no significant difference between blacks and whites in that respect in the county . . . ."[122] In addition, the court also found that "[w]hite candidates do actively seek the votes of blacks."[123] Further, as shown at 5-6 *supra,* the record

[119]457 U.S. at ____, 102 S.Ct. at 3279.

[120]*See supra* pp. 3, 5.

[121]Pretrial Stipulation ¶ F(1), (18) (J.A. 68, 74); McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 10 (N.D. Fla. July 10, 1978). (J.S. 79a-80a.)

[122]McMillan v. Escambia County, Fla., No. 77-0432, typescript op. at 10 (N.D. Fla. July 10, 1978). (J.S. 79a-80a.)

[123]*Id.* at 15. (J.S. 84a.) The County Commissioners testified that they not only actively seek the support of blacks, but that they consider the votes of blacks to be important to their successes as candidates and that, to this end, blacks participate in their campaigns. Transcript at 1466-67, 1498-99, 1514-16, 1555-56 (trial testimonies of

plainly shows that blacks in Escambia are active in the Democratic Party and that the Democratic Party supports equally black and white Democratic candidates. Nevertheless, the court found that blacks are denied access to the political process.[124]

The court based this finding on "the requirement of a filing fee of approximately $1,000.00" and the "consistent racially polarized or bloc voting pattern which operates to defeat black candidates."[125] With respect to the "filing fee," the court first ignored the fact that it is provided for by state law[126] and that, consequently, appellants in no

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Commissioners Beck, Kelson, Deese and Kenney respectively). (J.A. 472-73, 496-97, 508-10, 537-38.) This is further confirmed by the testimony of Lawrence Green, Democratic Precinct Chairperson for Escambia Precinct 53, who is black and testified that, during the many years in which he has been active in Escambia political campaigns, all candidates actively seek his support. *Id.* at 1992-97. (J.A. 560-564.)

[124]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 10, 19 (N.D. Fla. July 10, 1978). (J.S. 80a, 88a.) Although the court addressed separately past discrimination, it did not distinguish, as do the *Zimmer* factors, access to the candidate selection process from participation in the elector process. The facts pertaining to the candidate selection and elector processes overlap and are discussed jointly at 33-37 *supra* and *infra*.

[125]*Id.* at 10, 11. (J.S. 80a.) The court also relied on the lack of success blacks had had in those instances in which they had chosen to run. *Id.* The relative import of such a finding is discussed at 41 *infra*.

[126]*See supra* pp. 4-5. The court asserted that the "filing fee" is $1,000.00 because of its assumption that the fee is five (5) percent of a county commissioner's annual salary. McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 15 (N.D.Fla. July 10, 1978). (J.S. 84a.) This assumption is incorrect. As discussed at 4-5 *supra*, the filing fee is three (3) percent of a county commissioner's annual salary. In addition, the candidate's party may levy a party assessment of not more than two percent of a county commissioner's annual salary; and the amount of the assessment may be decreased or eliminated by the party's executive committee.

way are responsible for that provision. More importantly, the court also ignored the fact that the Florida statutes provide that if a person who wishes to become a candidate is unable to pay the filing fee and, if levied, the party assessment without imposing an undue burden on his or her financial resources, he or she may gain ballot access through a petition signed by only three (3) percent of the qualified electors in the county from the party whose nomination he or she seeks.[127] Under these circumstances, the provision in Florida law for the payment of a filing fee and possible payment of a party assessment may not be viewed as imposing a barrier to access for blacks to the political process; and the district court clearly erred in otherwise finding.

In *Rogers*, there was "overwhelming evidence of bloc voting along racial lines."[128] No such evidence exists in this case. Although the court found a consistent pattern of racially polarized or bloc voting, the court relied almost entirely on statistical evidence, consisting of regression analyses, appellees submitted.[129] In view of the fact that only three (3) blacks had run for the County Commission and had run only over a four (4) year period,[130] the probative value of this statistical evidence and the finding derived therefrom are, at best, dubious. This is confirmed by appellees' own expert, Dr. Charles L. Cotrell, who, in testifying about the appellees' statistical evidence, expressed doubt that that evidence could provide the basis for a find-

[127] *See supra* p. 5. Similarly, an independent candidate who is unable to pay the filing fee may gain ballot access through a petition signed by three percent of the registered voters in the county. *Id.* note 12.

[128] 457 U.S. at ____, 102 S.Ct. at 3279.

[129] *See* McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 11-14 (N.D. Fla. July 10, 1978). (J.S. 80a-83a.)

[130] One black, John Reed, ran twice. *See supra* note 22.

ing of racially polarized voting in elections for the County Commission because of the few instances in which blacks had run.[131]

Additionally, regression analysis does not account for such factors as the qualifications of the candidates and incumbency.[132] Regression analysis also would show polarization where blacks vote as a bloc for a black candidate and whites also vote for that candidate but to a lesser extent.[133] Indeed, appellees' expert, Dr. Glenn D. Curry, stated that a regression analysis could show polarization where blacks in a county are approximately sixteen (16) percent of the registered voters and a black candidate wins an election.[134] Accordingly, contrary to the court's finding, appellees' statistical evidence fails to show a pattern of racially polarized voting.[135]

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[131]Transcript, under separate cover, at 30-31. (J.A. 419.)

[132]Transcript at 307-08, 338-40 (testimony of appellees' expert, Dr. Glenn D. Curry). (J.A. 229-30, 251-53.)

[133]*Id.* at 333-38 (J.A. 247-52.); *Id.*, under separate cover, at 46-51 (testimony of appellants' expert, Dr. Manning J. Dauer). (Pages 47-51 of Dr. Dauer's testimony are reprinted in the Joint Appendix at 1591-94.) In this regard, it is noteworthy that appellees even asserted that "[u]nquestionably, a sizeable minority of white voters sometimes vote for black candidates." Plaintiffs' Pretrial Brief and Opposition to Defendants' Motions for Summary Judgment at 8. (R. 849.)

[134]Transcript at 337. (J.A. 251.)

[135]The majority of the statistical evidence and testimony concerning the polarization issue as well as the court's discussion of that issue centered on elections for the Pensacola City Council and the Escambia School Board, *see* McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 11-15 (N.D. Fla. July 10, 1978). (J.S. 81a-84a.) Blacks had run more frequently for those offices, and had run over a longer period of time, than for the County Commission, i.e., blacks had run for the Pensacola City Council nineteen (19) times over a twenty-two (22) year period, between 1955 and 1977, and had run five (5) times for the Escambia School Board over a six (6) year period, between 1970 and 1976. *See Id.* apps. A-C. (J.A. 107-13.)

The record in this case leaves no doubt that blacks in Escambia have full and equal access to the candidate selection process and the entire elector process.[136] The evidence simply does not support the court's clearly erroneous finding to the contrary.[137]

With respect to the remaining, primary *Zimmer* factors, the court in *Rogers* found "[e]xtensive evidence" that the elected officials were "unresponsive and insensitive to the needs of the black community."[138] In contrast, the court

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Arguably, therefore, there may have been more of a basis for the court's findings of patterns of polarization in those elections, particularly elections for the Pensacola City Council, than in elections for the County Commission. It appears that the court's finding of polarization in elections for the County Commission was based more on its interest in consistency than on the facts presented concerning County Commission elections.

This observation is applicable generally to the other findings the court made. As reflected in the court's July 10, 1978 opinion, the evidence which was presented centered primarily on the facts surrounding the creation and maintenance of the systems of electing persons to Escambia School Board and the Pensacola City Council, which have no bearing on the creation and maintenance of the system of electing Escambia's county commissioners. In view of the absence of evidence of discriminatory intent in the County Commission aspect of this suit, it is evident that the district court did not review the facts, and make its findings, regarding the County Commission independently of its findings on the School Board and City Council.

[136]Further evidence of the fact that blacks have full and equal access to the political processes in Escambia is found in the testimony of appellees' witness, William H. Marshall, an officer in the Escambia Democratic Executive Committee, *see supra* pp. 5-6, who is black and expressly stated that he has been involved actively in the political process in Escambia and has had full access to that process. Transcript, under separate cover, at 29-30.

[137]Under the *Zimmer* analysis, because past discrimination is only relevant to the present ability of blacks to participate in the elector process, the fact that blacks are able to participate fully in that process obviates the need to discuss past discrimination.

[138]457 U.S. at ____, 102 S.Ct. 3280.

in this case found appellants generally to be responsive to the needs of Escambia's black citizens.[139] Like the court in *Rogers*, the court also found that the policy underlying the enactment of the provision for at-large elections was not a function of race but that the at-large system was being maintained for a discriminatory purpose.[140] However, as previously discussed, the court in this case did not consider the policy underlying Florida's continued preference for its constitutional provision requiring at-large elections.[141] While the court did find that the County Commission's preference for the at-large election system was motivated by racial considerations, that finding was based on the decision by the County Commission not to include in a charter referendum a proposal for a single-member district election system.[142] Appellants already have shown that that finding was clearly erroneous and that the County Commissioners' preference of the at-large system was not motivated by racial considerations.[143]

Because none of the primary *Zimmer* factors is present, there is nothing to be enhanced and it should be unnecessary to consider the enhancing *Zimmer* factors. Even if considered, however, consideration of these factors further shows that the district court's finding of discriminatory intent was clearly erroneous. In *Rogers*, the

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[139]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 15, 19 (N.D. Fla. July 10, 1978). (J.S. 85a, 88a.)

[140]*Compare Rogers*, 457 U.S. at ____, 102 S.Ct. at 3280, *with* McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 25 (N.D. Fla. July 10, 1978) (J.S. 93a).

[141]*See supra* pp. 27, 29.

[142]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 29-30 (N.D. Fla. July 10, 1978). (J.S. 96a-98a.)

[143]*See supra* pp. 29-32.

court found that the size of the county had made it difficult for blacks to go to polling places and to campaign.[144] The court also found there to be no residency requirement, which allowed all candidates to reside in all-white neighborhoods, and a majority vote requirement.[145] Although there was no anti-single shot voting provision, the court found that candidates were required to run for numbered places, which prevented "a cohesive political group from concentrating on a single candidate."[146]

In this case, the court recognized that there is no anti-single shot voting provision and no majority vote requirement in the general election and that there is a requirement that each candidate reside in the district from which he or she runs.[147] However, the court also found that blacks cannot concentrate their votes because candidates run for "numbered places."[148] The court ignored the fact that the so-called "numbered place" requirement is simply a function of the residency requirement, which prevents all candidates from living in all-white neighborhoods. Finally, the court found that Escambia is "geographically large."[149] However, the court failed to explain what effect, if any, Escambia's size has on the access of blacks to the

[144]457 U.S. at ____, 102 S.Ct. at 3280-81.

[145]*Id.* at ____, 102 S.Ct. at 3281.

[146]*Id.*

[147]McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 18 (N.D. Fla. July 10, 1978). (J.S. 87a-88a.)

[148]*Id.*

[149]*Id.* Escambia is, however, geographically smaller than a majority of Florida's counties. Of Florida's sixty-seven (67) counties, thirty-seven (37) are larger than Escambia. *See* Bureau of the Census, U.S. Dept. of Commerce, PC 80-1-A11, 1980 Census of Population – Florida 8 (1982).

political process. Escambia's Supervisor of Elections, Joe Oldmixon, testified that his office had received no complaints that polling places are inaccessible to blacks;[150] and appellees offered no evidence to the contrary. When considered together with the fact that blacks and whites register to vote at approximately the same rate,[151] there is no doubt that Escambia's size has not had a negative impact on the voting strength of Escambia's black citizens.

In sum, an aggregate of the *Zimmer* factors and the one, non-*Zimmer* factor the court considered fail to support the district court's finding that appellants were maintaining the at-large system of electing Escambia's county commissioners for a discriminatory purpose and, in fact, show that finding to have been clearly erroneous. In *McMillan I*, the Fifth Circuit reviewed the entire record and "found no evidence of racial motivation by the county commissioners in retaining the at-large system."[152] Even though the applicable legal standard the Fifth Circuit applied in *McMillan I* was no different from the legal standard this Court articulated in *Rogers* and even though no new evidence was introduced, the Fifth Circuit, in *McMillan III*, upheld the district court's finding of discriminatory intent. Apart from the Fifth Circuit's erroneous conclusion that this Court's decision in *Rogers* changed the applicable legal standard, the above review of the record shows that the decision in *McMillan III* may be explained only by the Fifth Circuit's having misinterpreted the clearly erroneous standard as precluding it from disturbing the district court's findings.

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[150]Transcript at 2022.

[151]*See supra* p. 5.

[152]638 F.2d at 1245. (J.S. 42a.)

This Court's decision in *Rogers* leaves no doubt that an at-large election system may not be held to be unconstitutional unless a court finds evidence to show that the system was established or is maintained for a discriminatory purpose. All the record in this case shows is that, in the few instances in which they have chosen to run for the County Commission, blacks have not been elected and are not represented on the County Commission in proportion to their percentage of the population. As this Court held in *Whitcomb v. Chavis:*[153]

> The mere fact that one interest group or another concerned with the outcome of. . . elections has found itself outvoted and without legislative seats provides no basis for invoking constitutional remedies where, as here, there is no indication that this segment of the population is being denied access to the political system.[154]

Additionally, this Court consistently has held that minorities are not entitled to proportional representation.[155] The district court's decision and the Fifth Circuit's affirmance of that decision run directly contrary to these well-established principles. As such, those decisions stand as an invitation to minorities to challenge, and courts to hold unconstitutional, at-large election systems merely because minorities either are defeated at the polls or are not represented on governing bodies in proportion to their percentage of the population. Unless this Court is

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[153]403 U.S. 124 (1971).

[154]*Id.* at 154-55; *accord* United Jewish Organizations of Williamsburgh, Inc. v. Carey, 430 U.S. 144, 166 (1977) (plurality opinion); *see Rogers*, 457 U.S. at ____, 102 S.Ct. at 3279.

[155]*E.g.*, White v. Regester, 412 U.S. 755, 765-66 (1973); *Whitcomb*, 403 U.S. at 149-50.

willing to effect such a drastic change in constitutional law, the decisions below must not be allowed to stand.

II. Following a Decision Striking Down an At-Large Election System, the Failure of a Court To Consider as a "Legislative Plan" a Remedy a Legislative Body Adopts and the Consequent Imposition by a Court of a Judicially Created Remedy Is an Unwarranted Preemption of a Legislative Task.

The lower courts' decisions on the remedy issue also represent a dramatic and unwarranted departure from this Court's well-established principles. This Court frequently has admonished lower courts that "redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to preempt."[156] The courts below disregarded this teaching. Rather than considering as a "legislative plan" the remedial election system and reapportionment plan[157] the

[156] Wise v. Lipscomb, 437 U.S. 535, 539 (1978) (plurality opinion); *accord* Upham v. Seamon, 456 U.S. 37, 41-42 (1982); *Wise*, 437 U.S. at 550 (Marshall, J., dissenting); Connor v. Finch, 431 U.S. 407, 414 (1977); Chapman v. Meier, 420 U.S.1, 26-27 (1975); White v. Weiser, 412 U.S. 783, 795 (1973); Burns v. Richardson, 384 U.S. 73, 89 (1966).

[157] Neither the Fifth Circuit nor the district court specifically addressed the remedial reapportionment plan the County Commission adopted but, rather, limited their opinions to the County Commission's proposed, remedial election system. The district court's December 3, 1979 remedial Order, however, imposed a judicially created reapportionment plan and further ordered the Court Commission to reapportion the county commissioners' districts following each decennial census. McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1, 2 (N.D. Fla. Dec. 3, 1979). (J.S. 59a, 60a.) As discussed at 17 *supra*, prior to the decision in *McMillan III*, the 1980 census was published and, pursuant to Fla. Const. art. VIII, § 1(e); Fla. Stat. § 124.01 (1981), the County Commission reapportioned the county commissioners' districts according to the required one person, one vote principle.

County Commission adopted and submitted to the court, the district court imposed a judicially created remedy and, in *McMillan III*, the Fifth Circuit affirmed that remedy.[158]

While silent on the reapportionment issue, the issue of the validity of the district court's reapportionment plan was moot when the Fifth Circuit issued its decision in *McMillan III;* and that decision only may be read as affirming that part of the district court's remedial Order which directed the County Commission to reapportion the county commissioners' district following each census. However, to the extent that either the opinion of the district court or the opinion of the Fifth Circuit may be read as upholding the power of the district court to impose a judicially created reapportionment plan, the arguments appellants have set forth at 44-49 *infra* with respect to the imposition of a judicially created election system are applicable to the imposition of a judicially created reapportionment plan. Indeed, those arguments apply even more forcefully because the Florida Constitution and statutes not only allow but require non-charter county commissions to reapportion county commissioners' districts.

[158]As discussed at 11-14 *supra*, the primary difference between the remedy the County Commission adopted and the remedy the court created was that the County Commission's remedy provided for a seven-member county commission with five members to be elected from single-member districts and two members to be elected at-large while the court's remedy provided for a five-member county commission with all members to be elected from single-member districts. It was necessary for the courts to decide whether the County Commission's proposal could be considered a "legislative plan" because of this Court's holdings that, absent compelling reasons, a judicially created remedy must avoid the use of at-large districts but that a "legislative plan" may employ such districts. *E.g.*, McDaniel v. Sanchez, 452 U.S. 130, 138-39 (1981) (citing Connor v. Finch, 431 U.S. 407, 414-15 (1977); Chapman v. Meier, 420 U.S. 1, 26-27 (1975); Mahan v. Howell, 410 U.S. 315 (1973)).

A. The Fifth Circuit and the District Court Erred in Failing To Apply the Analysis in *Wise* of Justice Powell.

The decisions below were based on the court's interpretation of *Wise v. Lipscomb* and Fla.Const. art. VIII, § 1(f). Both the Fifth Circuit and the district court adopted Justice White's analysis, rather than Justice Powell's analysis, in *Wise*.[159] In addition, the Fifth Circuit acknowledged that "[i]n this case, however, we are presented with a fact situation that. . . . under Justice Powell's analysis would be considered a legislative plan."[160] This Court's decision in *McDaniel v. Sanchez*[161] confirms that the district court and the Fifth Circuit should have adopted Justice Powell's analysis in *Wise* and erred in adopting Justice White's analysis.

The issue before the Court in *McDaniel* turned on whether a reapportionment plan a legislative body adopted and a district court ordered into effect in response to a decision holding unconstitutional the existing reapportionment plan was a court-ordered plan or a "legislative plan." In holding that the reapportionment plan was a "legislative plan" and, thus, subject to preclearance under section 5 of the Voting Rights Act of 1965,[162] the Court reasoned:

> The application of the statute [section 5] also is not dependent upon any showing that the Com-

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[159] *McMillan III*, 688 F.2d at 972 (J.S. 28a); *see* McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 2-3 (N.D. Fla. Sept. 24, 1979) (J.S. 67a-69a).

[160] *McMillan III*, 688 F.2d at 972 n. 25. (J.S. 29a.)

[161] 452 U.S. 130 (1981). The decision in *McDaniel* was rendered after the Fifth Circuit's decisions in *McMillan I* and *McMillan II* but before its decision in *McMillan III*.

[162] 42 U.S.C. § 1973c (1976).

> missioners Court had authority under state law to enact the apportionment plan at issue in this case. As Justice POWELL pointed out in *Wise v. Lipscomb*, . . . the essential characteristic of a legislative plan is the exercise of legislative judgment. The fact that particular requirements of state law may not be satisfied before a plan is proposed to a federal court does not alter this essential characteristic.[163]

Particularly in light of the Fifth Circuit's recognition that, under Justice Powell's analysis, the County Commission's proposed remedy would be considered a "legislative plan," the decision by the district court and the Fifth Circuit to disregard the County Commission's proposal cannot stand.[164]

B. Florida Law Secures Non-Charter County Commissions Broad Powers, and, Therefore, Even Under Justice White's Analysis in *Wise*, the Courts Below Should Have Considered as a "Legislative Plan" the County Commission's Proposed Remedy and Erred in Imposing a Judicially Created Remedy.

Even under Justice White's analysis in *Wise*, the lower courts' decisions were wrong. Of particular significance to the courts below was Justice White's observation that,

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[163] *McDaniel*, 452 U.S. at 152. Under Justice White's analysis in *Wise*, a remedy a legislative body adopts may be considered a "legislative plan" only if state law provides that body with the power, express or implied, to adopt the remedy. *Wise*, 437 U.S. at 544 & n.8.

[164] Justice Powell's opinion in *Wise* leaves open the question whether a remedy a legislative body adopts may be considered a "legislative plan" where, rather than being silent, the state constitution and statutes expressly prohibit the legislative body from adopting, for consideration as a "legislative plan," a remedy. As shown at 45-48 *infra*, this case does not present that question.

following a decision holding unconstitutional the existing system for elections to the Dallas City Council, there was no state constitutional, statutory or judicial prohibition on the authority of the Dallas City Council to enact a new election system.[165] Both courts concluded that, unlike Texas law, Fla. Const. art. VIII, § 1(f) "expressly limits the legislative powers of the County Commission to those specifically authorized by state law," which does not include authorization for a non-charter county commission to adopt a remedial election system.[166] The portion of Fla. Const. art. VIII, § 1(f) on which the courts relied provides: "Counties not operating under county charters shall have such power of self-government as is provided by general or special law."[167] However, the courts ignored the remaining portion of that provision as well as the Florida statutes and a Florida Supreme Court decision concerning the powers of non-charter county commissions. Specifically, Fla. Const. art. VIII, § 1(f) also provides: "The board of county commissioners of a county not operating under a charter may enact. . . county ordinances *not inconsis-*

[165] *McMillan III*, 688 F.2d at 972 (J.S. 27a); McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 2 (N.D. Fla. Sept. 24, 1979) (J.S. 67a-68a.).

[166] *McMillan III*, 688 F.2d at 972 (J.S. 29a); *accord* McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 3 (N.D.Fla. Sept. 24, 1979) (J.S. 68a.).

[167] *McMillan III*, 688 F.2d at 971 (J.S. 25a-26a.); McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 3 (N.D. Fla. Sept. 24, 1979) (J.S. 68a.).Both courts quoted Fla. Const. art. VIII, § 1(f). The district court, however, erroneously quoted this section as providing that "the Escambia County Commission has *'only* such power of self government [sic] as is provided by general or special law.'" McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 3 (N.D. Fla. Sept. 24, 1979) (emphasis added). (J.S. 68a.) This inaccurate quotation apparently was a major factor in the court's erroneous decision.

tent with general or special law."[168] The Florida statutes provide: "The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, *this power shall include, but shall not be restricted to,* the power to. . . ."[169] and further provide: "The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and *to secure for the counties the broad exercise of home rule powers* authorized by the State Constitution."[170] As interpreted by the Florida Supreme Court:

> This provision of the Florida Constitution [art. VIII, § 1(f)] also authorizes the board of county commissioners of such a county to enact ordinances in the manner prescribed by Chapter 125, Florida Statutes, which are not inconsistent with general law.
>
> *The intent of the legislature* in enacting the recent amendments to Chapter 125, Florida Statutes, *was to enlarge the powers of counties through home rule to govern themselves.*
>
> . . . Unless the legislature has preempted a particular subject relating to county government by either general or special law, the county governing body, by reason of this sentence [in Fla. Stat. § 125.01] has authority to act through the exercise of home rule power.[171]

[168](Emphasis added).

[169]Fla. Stat. § 125.01 (1) (1981) (emphasis added).

[170]*Id.* § 125.01(3) (b) (1981) (emphasis added).

[171]Speer v. Olson, 367 So.2d 207, 210-11 (Fla. 1978) (emphasis added). The interpretation of state law by the highest court of a state is, of course, binding on this Court and all other federal courts. *E.g.*, Brown v. Ohio, 432 U.S. 161-167 (1977); Gurley v. Rhoden, 421 U.S. 200, 208 (1975); Garner v. Louisiana, 368 U.S. 157, 169 (1961).

As is readily apparent, Florida law provides non-charter county commissions with expansive powers. The Florida Legislature has not sought to preempt the field of providing a remedial election system or reapportionment plan in response to a decision striking down the system of electing a non-charter county's county commissioners. Under these circumstances, the County Commission certainly was acting within its powers in adopting the remedy appellants submitted to the court. Accordingly, under Justice White's analysis in *Wise*, the courts below erred in disregarding the remedy the County Commission adopted.

The consequence of the erroneous decisions by the Fifth Circuit and the district court is that a federal court unjustifiably has preempted the performance by a legislative body of a legislative function.[172] This Court must not

[172]On remand, the district court recognized that it and the Fifth Circuit had erred in adopting Justice White's analysis, rather than Justice Powell's analysis, in *Wise*. McMillan v. Escambia County, Fla., 559 F.Supp. 720, 724 (N.D. Fla. 1983) (Memorandum Decision), *appeal docketed*, No. 83-3275 (11th Cir. Apr. 27, 1983), *petition for cert. before judgment filed*, 52 U.S.L.W. 3005 (U.S. July 1, 1983) (No. 82-2155). Nevertheless, the court held that the "law of the case" doctrine required it to carry out the Fifth Circuit's mandate because none of the exceptions to that doctrine was applicable. *Id.* at 725, 730. Accordingly, the court issued an Order, McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D. Fla. Mar. 11, 1983), *appeal docketed*, No. 83-3275 (11th Cir. Apr. 27, 1983), *petition for cert. before judgment filed*, 52 U.S.L.W. 3005 (U.S. July 1, 1983) (No. 82-2155), implementing its interpretation of the Fifth Circuit's decision in *McMillan III*.

Because the court previously had recognized that Justice Powell's analysis was controlling, the court, prior to rendering its decision, had advised the County Commission to adopt for possible consideration as a "legislative plan" a remedial election system and reapportionment plan. In addition to holding that the "law of the case" doctrine precluded it from considering the remedy the County Commission adopted on remand, the court also determined that, if that doctrine

sanction such an unwarranted intrusion on, and usurpation of, legislative powers.

CONCLUSION

For the foregoing reasons, the judgment of the Fifth Circuit in *McMillan III* should be reversed.

Respectfully submitted,

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were not a bar, the court would not have implemented the County Commission's remedy because it did not guarantee blacks the opportunity to elect representatives in proportion to their percentage of the population. McMillan v. Escambia County, Fla., 559 F. Supp. at 725, 729, 730. Appellants strongly disagree with the actions taken by the district court on remand and with the reasons underlying those actions. In the interest of resolving all aspects of this case at one time, appellants herein have sought immediate and direct review in this Court of the Order and accompanying opinion the district court issued on remand. Petition for a Writ of Certiorari Before Judgment to the United States Court of Appeals for the Eleventh Circuit, Escambia County, Fla. v. McMillan, No. 82-2155 (U.S. filed July 1, 1983).

DEC 9 PAGE 12

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

December 6, 1983

Alexander L. Stevas, Clerk
Supreme Court of the United States
1 First Street, N. E.
Washington, D. C. 20543

Re: Escambia County, Florida, et al. v. Henry T. McMillan, et al., No. 82-1295 (U.S.)

Dear Mr. Stevas:

This is to advise the Court of recent developments in the above-referenced action which concern the representation by the undersigned counsel.

This action was brought against Escambia County, Florida ("Escambia") and the individual members of the Escambia Board of County Commissioners ("County Commission") in their individual and official capacities. See Brief of Appellants at 1n. 1, 6, 7n. 25. The suit challenged the at-large system of electing Escambia's county commissioners provided for by Fla. Const. art. VIII, §1(e). The undersigned counsel was retained by the Commissioners in office when the suit was filed to represent them and Escambia against the claim that the at-large election system violated the constitutional and statutory rights of appellees.

The original, individual appellants in the instant appeal were elected under the at-large election system in issue or were substituted in office by the Governor of Florida, under Florida law, for persons elected under the at-large system. Those original appellants are: Chairman Kenneth J. Kelson ("Kelson"); John E. Frenkel, Jr. ("Frenkel"); Billy G. Tennant ("Tennant"); Gerald Woolard ("Woolard"); and Marvin Beck ("Beck"). These persons, who comprised the County Commission, unanimously voted for counsel to appeal the decision by the United States Court of Appeals for the Fifth Circuit herein appealed to this Court, and counsel have acted pursuant to those instructions.

The Fifth Circuit's decision invalidated the at-large election system, upheld the district court's imposition of a judicially created, single-member district election system and apportionment plan and remanded the case to the district court to revise the scheduling terms of the remedial order. Id. at 19-20. The original appellants requested a stay of mandate which, on November 23, 1983, the Fifth Circuit denied. Id. at 20n. 98.

As a result, they next applied for a stay of the Fifth Circuit's judgment pending appeal or an order allowing elections to proceed under the at-large system challenged in this suit. On December 2, 1982, Justice Powell denied the application. Id.

On remand, the district court held several hearings, received briefs and, on March 11, 1983, issued an Order, McMillan v. Escambia County, Florida, PCA No. 77-0432 (N.D. Fla. Mar. 11, 1983), appeal docketed, No. 83-3275 (11th Cir. Apr. 27, 1983), petition for cert. before judgment denied, ___U.S.___, 104 S.Ct. 108 (1983), implementing its interpretation of the Fifth Circuit's mandate. The original appellants again requested a stay pending appeal of the Fifth Circuit's judgment, together with the district court's Order issued in consequence of that judgment, and an order directing elections to go forward under the at-large system. Alternatively, appellants requested a stay of elections pending the Court's disposition of the appeal. On May 26, 1983, Justice Powell denied that application. Id.

Pursuant to the district court's Order, elections under the court's single-member district system and apportionment plan were held on November 1, 1983. The following persons were elected: Kelson; Phil Waltrip ("Waltrip"); Grady Albritton ("Albritton"); Max Dickson ("Dickson" and Willie J. Junior ("Junior").

Appellees then filed in the district court a motion to dismiss original Commissioner appellants in their individual capacities. In response to the filing of that motion, appellants moved this Court for an order maintaining the status quo pending appeal with respect to the parties and the case. On or about November 10, 1983, appellees filed in the district court a motion to withdraw their motion to dismiss, and, on November 14, 1983, this Court denied appellants' motion for an order maintaining the status quo.

On November 15, 1983, the persons elected under the district court's single-member district system and apportionment plan assumed office. On December 1, 1983, Waltrip, Albritton and Junior voted "to withdraw" the appeal in this Court. Chairman Kelson and Dickson voted against any such withdrawal. As a result of the vote, the following telegram was received:

Charles S. Rhyne
1000 Connecticut Ave Northwest Suite 800
Washington, D. C. 20036

This is a confirmation copy of a telegram addressed to you:

Re Cases 82-1295 and 83-3275
Direct that you substitute recently elected commissioners for those commissioners not reelected. The names of the recently elected commissioners were provided at an earlier date to your office. Direct that you immediately file appropriate motions to withdraw the appeals in both cases.

Thomas R. Santurri
Escambia County Attorney
Courthouse Annex 4th Floor
Pensacola, Fla 32501

However, by letters to counsel, Chairman Kelson and Dickson specifically requested the undersigned counsel to go forward on their behalf with the appeals. In addition, the other, original Commissioner appellants — Beck, Tennant, Frenkel and Woolard — made the same request.

These circumstances have placed the undersigned counsel in a possible conflict of interest position. The persons elected under the district court's single-member district election system and apportionment plan are the direct beneficiaries of the relief appellees have sought. Indeed, one of those elected, Junior, is a member of the appellee class and, as such, is an appellee in this case. It was his vote that resulted in the 3-2 decision by the recently elected persons which has led to the situation herein described. 1/

On the other hand, there may be no doubt as to Chairman Kelson's right to go forward with this appeal. Kelson was elected under the at-large system and was in office at the time this suit was commenced. The suit was brought against him both in his individual and official capacities. He was a commissioner at all times from the commencement of the suit until those elected under the district court's Order assumed office; and he is one of the persons who was elected and has assumed office under that Order. Further, he has been elected Chairman.

The only matters remaining at present in this appeal are the brief in reply to the Brief of Appellees and the oral argument, which has been scheduled for January 10, 1984. This case involves issues of paramount nationwide importance to the many municipalities whose governing officials are elected at-large. Because Chairman Kelson was among the persons who originally retained the undersigned counsel, because his current position is fully consistent with the purposes for which counsel has been retained and because any other course of action would deny him his right to appeal, counsel have decided that they must continue to represent Chairman Kelson, and to go forward on his behalf with the appeal. Further, counsel is prepared to represent the interests of the other, original Commissioner appellants, all of whom have requested them to do so, as well as the interests of Dickson.

As a result of the above, the undersigned counsel are unable to represen

---

1/In this regard, it is noteworthy that in a similar situation, the Honorable Virgil Pittman recently issued the following order:

> Commissioners Cox and Gilliard are ENJOINED from voting on whether an appeal should be taken. They were elected from the single-member districts established by this court's orders of December, 1976. The other four members of the board at this time were all elected at-large...and were members at the time of the December, 1976 orders. It would be inequitable and unfair to permit voting on this issue by board members elected as a result of an order of this court. It would also be unfair not to let all board members elected at-large vote on an appeal.

Brown v. Board of School Comm'rs of Mobile County, Ala., Civ. Act. No. 75-298-P, ftypescript op. at 3, (S.D. Ala. May 12, 1982)(Final Judgment and Injunction).

the interests of Junior, Albritton and Waltrip. The status of Junior as an appellee emphasizes the conflict which has led to this decision. Thus, the undersigned counsel are withdrawing from any representation of Junior, Waltrip and Albritton and only will represent Chairman Kelson, Dickson, Frenkel, Tennant, Woolard and Beck.

Unless the Court otherwise directs, the undersigned counsel will file a reply brief and will appear at the argument on January 10, 1984, on behalf of Chairman Kelson, Dickson, Frenkel, Tennant, Woolard and Beck.

Sincerely,

Charles S. Rhyne
(Counsel of Record)

J. Lee Rankin

Thomas D. Silverstein

CSR:mm

cc: All Counsel and
All Persons Named Above

No. 82-1295

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, et al.,

Appellants,

v.

HENRY T. McMILLAN, et al.,

Appellees.

NOTICE OF SUBSTITUTION OF PARTIES
AND
MOTION TO DISMISS THE APPEAL

NOTICE IS HEREBY GIVEN that the Defendants-Appellants, Escambia County, Florida, and the Members of the Escambia Board of County Commissioners through undersigned counsel would show unto the Court as follows:

1. Pursuant to the elections held on November 1, 1983 and certified by the Supervisor of Elections on November 2, 1983, the following persons are substituted as Members of the Defendant-Appellant, Escambia County Commission:

Phillip M. Waltrip
Kenneth J. Kelson
Willie J. Junior
Max L. Dickson
Grady Albritton

2. Defendants-Appellants, Escambia County, Florida through its Board of County Commissioners move to dismiss this appeal as to Escambia County, Florida and its Board of County Commissioners.

3. Defendants-Appellants, Willie J. Junior, Phillip M. Waltrip and Grady Albritton, move to dismiss the appeal as to these Defendants in their individual capacity.

4. The Defendants-Appellants Kenneth J. Kelson and Max L. Dickson, in their individual capacity, do not join in this Motion.

Respectfully submitted this 5th day of December, 1983.

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CERTIFICATE OF SERVICE

I, Thomas R. Santurri, hereby certify that on this 5th day of December, 1983, I caused to be served one copy of the foregoing Notice of Substitution of Parties and Motion to Dismiss the Appeal on the following:

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FILED
NOV 7 1983
ALEXANDER L. STEVAS,

NO. 82-1295

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1983

ESCAMBIA COUNTY, FLORIDA, ET AL.,
Appellants,

v.

HENRY T. MCMILLAN, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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NO. 82-1295

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1983

ESCAMBIA COUNTY, FLORIDA, ET AL.,
Appellants,

v.

HENRY T. MCMILLAN, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF APPELLEES

Appellees Henry T. McMillan, Robert Crane, Charles L. Scott, William F. Maxwell, and Clifford Stokes, on behalf of themselves and the class of black citizens of Escambia County, submit this brief and request the Court to dismiss the appeal or to affirm the judgment of the Court of Appeals.

JURISDICTION

This Court does not have jurisdiction over this appeal under 28 U.S.C. §1254(2), as Appellants assert. No state statute or constitutional provision has been invalidated by the judgment below. See Argument, *infra* at p. 8.

STATEMENT OF THE CASE

This action by black citizens challenging the at-large system for electing county commissioners in Escambia County, Florida, commenced on March 18, 1977. J.A. 45. Following a nine-day nonjury trial, the district court entered an opinion and judgment on July 10, 1978, finding that the election scheme had been maintained for a racially indivious purpose and that it effectively diluted the voting strength of black voters in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §1973, and the fourteenth and fifteenth amendments. J.S. 71a, 114a.[1]

Acknowledging the directions in *Wise v. Lipscomb*, 437 U.S. 535 (1978), the District Court postponed entry of a remedial order to provide the state an opportunity to present a legislative plan meeting constitutional requirements. J.S. 104-05a.[2] The Florida Constitution requires all noncharter counties to utilize at-large elections exclusively for their county commissions. Fla. Const. Art. VIII, §1; J.S. 123-24a. The local legislative delegation had already appointed a charter committee

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[1]Similar claims against the election systems for the Escambia County School Board and the City of Pensacola Council were tried and decided at the same time. The district court found racial motives behind all three election schemes and concluded that all three were unconstitutional and unlawful. J.S. 99a-100a. The City of Pensacola and one member of the school board (but not the entire board) appealed with the county commissioners to the Court of Appeals. The Court of Appeals affirmed the judgments against the city council and school board election structures, and both matters are now finally resolved. *Jenkins v. City of Pensacola*, 638 F.2d 1249 (5th Cir. 1981), *appeal and pet. for cert. dismissed per stipulations*, 453 U.S. 946 (1981); *McMillan v. Escambia County*, 638 F.2d 1239 (5th Cir. 1981).

[2]The Pensacola City Council, which operates under a home rule municipal charter, adopted by ordinance a mixed plan of seven single-member districts and three at-large seats. Under *Wise*, the district court gave legislative deference to the city council's plan and ruled that it met constitutional standards. Plaintiffs appealed this remedial plan, but the Court of Appeals affirmed. *See generally, Jenkins v. City of Pensacola, supra*. There was no legislative proposal for the school board, and a court-ordered plan, utilizing single-member districts exclusively, was adopted for that body. *See McMillan v. Escambia County, supra*.

and had set in motion the process for a referendum election on home rule. J.S. 67a; J.A. 318. The election system in the proposed charter called for a seven-member county commission with five elected from single-member districts and two elected at large. J.S. 67a. In light of *Wise v. Lipscomb*, the District Court gave legislative deference to the charter proposal and approved the 5-2 plan as satisfying constitutional requirements. J.S. 70a. However, on November 6, 1979, Escambia County's voters defeated the home rule proposal. J.S. 54a. Accordingly, on December 3, 1979, the District Court adopted a court-ordered election plan consisting of five single-member districts. J.S. 59a. Another 5-2 plan advanced by the incumbent county commissioners was rejected on the ground that, lacking home rule powers, the commission had no authority under Florida law to change the constitutionally designated at-large structure. J.S. 68a.

On February 19, 1981, the Court of Appeals reversed the judgment against the county commission at-large system, holding that the district judge's disbelief of the commissioners' "good government" reasons was insufficient to support a finding of racial intent in the absence of other contradictory evidence. J.S. 43a. However, on September 24, 1982, the panel granted Plaintiffs' petition for rehearing and affirmed the District Court's judgment striking down the at-large county commission election system. J.S. 1a. In its opinion on rehearing, the Court of Appeals acknowledged that the district judge had in fact considered a wide range of other historical evidence and testimony that supported his finding of invidious intent, and that there had been inconsistencies in the commissioners' non-racial explanations. J.S. 13-21a. Obeying the teaching of this Court's intervening decision in *Rogers v. Lodge*, 102 S.Ct. 3272 (1982), the Court of Appeals concluded that the District Court's findings of fact were supported by the evidence and were not clearly erroneous. J.S. 21-22a. Finally, it affirmed the District Court's remedial rulings as properly applying the principles of *Wise v. Lipscomb*. J.S. 28-29a.

On November 30, 1982, the incumbent county commissioners[3] filed a notice of appeal to this Court, citing 28 U.S.C. §1254(2). J.S. 120-21a. Probable jurisdiction was noted on April 18, 1983. *Escambia County v. McMillan*, 103 S.Ct. 1766 (1983).

On October 4, 1983, the Court denied Appellants' petition for writ of certiorari to review issues concerning redistricting that had arisen on remand and which have not yet been addressed by the Court of Appeals. *Escambia County v. McMillan*, 52 U.S.L.W. 3246 (Oct. 4, 1983). These remand issues concern primarily preclearance under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a, of new district boundaries approved by the District Court as a result of the intervening 1980 census.

SUMMARY OF ARGUMENT

The Court does not have jurisdiction over this appeal, because no state statute has been declared invalid by the Court of Appeals. The District Court did enter findings of fact and conclusions of law that support its judgment on the alternative ground that the state constitutional provision requiring at-large elections in noncharter counties is invalid as applied to Escambia County. But the judgment of the Court of Appeals is grounded solely on the District Court's finding of fact that the county commissioners, for racially invidious reasons that violate the fourteenth amendment, chose not to adopt an alternative single-member district election method that is authorized by the Florida Constitution.

If the Court nevertheless considers the appeal as a petition for writ of certiorari, the petition should be denied. Because the Court of Appeals declined to consider the Voting Rights Act claim, reversal of the constitutional ruling striking down the at-large plan would, at most, require a remand for consid-

[3]This appeal was taken by Escambia County, Fla., and the members of its Board of County Commissioners. J.S. 120a. The five commissioners who were elected November 1, 1983, and who will take office November 15 are Phil Waltrip, Kenneth Kelson, Willie Junior, Max Dickson, and Grady Albritton. The Supervisor of Elections is not a party to the appeal. Appellants' Brief at 1 n.1.

eration of the same facts to determine if there has been a statutory violation. Moreover, the remedy issues presented by the Appellants concern only the construction of Florida law. The Attorney General of Florida agrees with both lower courts that the county commission is barred by state law from changing its election system, unless the county adopts home rule. Escambia County's voters defeated the home rule charter presented to them during the remedy phase of this case. The Florida Legislature has been asked to address this question, and the Court should not inject itself in the state's deliberations about what government body should be given authority to adopt a legislative remedy for an unconstitutional election system.

If the Court decides to review this case on its merits, the judgment of the Court of Appeals should be affirmed. There is extensive evidence supporting the District Court's finding of fact that the decision of the incumbent commissioners not to give the voters a single-member district option was racially motivated. The district judge listened to the in-court testimony of the commissioners and found that their nonracial explanations were inconsistent with their current practices and could not be believed. The applicable standard of review does not permit setting aside this finding unless it is clearly erroneous. *Rogers v. Lodge,* 102 S.Ct. 3272 (1982); *Pullman Standard v. Swint,* 102 S.Ct. 1781 (1982). In this case, the District Court assessed the Appellants' motives in light of the criteria for detecting invidious intent set out in *Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977). The District Court also applied the analytical standards later approved by this Court in *Rogers v. Lodge, supra.* The trial judge made specific findings that the at-large system systematically denies black voters in Escambia County an equal opportunity to participate in the electoral process. Looking beyond this adverse impact, leading up to the incumbent commissioners' actions he found a century-long historical background of official manipulation of the election system for the purpose of excluding the electoral choices of black citizens. The official policy of Florida during the half a century when the election

was determined in the all-white primary favored single-member districts. The primaries changed to at-large voting in 1954, after this Court struck down the white primary. The District Court's findings, therefore, make this a paradigm of the kind of intensely factual decision that ought not to be disturbed on appeal.

Independent of the appellant commissioners' racial motives, the findings of fact made by the District Court in regard to the purposefully discriminatory history of the state law governing the county commission election system provide alternative constitutional grounds, not reached by the Court of Appeals, for affirming the judgment:

(1) The at-large election requirement for noncharter county commissions was adopted in 1901 in violation of the fifteenth amendment, because black citizens were officially denied the right to vote in the referendum election that approved the constitutional amendment.

(2) For the first half of the twentieth century, Florida operated a "dual" election system, in which white voters were allowed to use single-member districts in the all-white Democratic Primary – the only election that counted, while blacks were restricted to voting in the at-large general elections. The state officially authorized blacks to vote in the primary in 1945 and then changed to at-large voting in the primaries in 1954. But, the District Court found, polarized racial voting, caused in part by past official sanction of the dual election system, continues systematically to defeat all of the blacks' electoral choices under the at-large scheme. Consequently, in Escambia County, the state has failed to take adequate steps to eliminate the vestiges of the de jure dual system.

(3) Under a separate theory, suggested by Justice Stevens, a racial legislative purpose in the at-large election law may be inferred solely from the following objective facts found by the District Court: For the last two decades, the at-large county commission election system has resulted in the systematic defeat of blacks' electoral choices, on account of a predictable antagonistic vote by the controlling white majority bloc. In addition, the election system is characterized by special features, num-

bered places and a majority vote requirement, that demonstrate a clear design to maximize the political strength of the majority faction.

Since the judgment in this appeal was entered, the District Court has ordered a new election plan, based on the 1980 census. *McMillan v. Escambia County*, 559 F.Supp. 720 (N.D. Fla. 1983). Although the new remedial plan technically may not moot this appeal (because the District Court rested its 1983 remedy order, in the first instance, on law of the case), there is a serious question whether in this appeal the remedy issue remains meaningful.

In providing a remedy for the constitutional violation, the District Court carefully followed the teaching of *Wise v. Lipscomb*, 437 U.S. 535 (1978). The Florida Constitution specifies the use of at-large elections for county commissions, except where the county adopts home rule, in which event it may choose any election method it wishes in its charter. Following entry of its judgment striking down the at-large scheme, the District Court withheld a ruling on remedy to allow the county's citizens time to vote on a proposal initiated by Escambia County's legislative delegation to adopt a home rule charter. Before the referendum was held, the court ruled that, if it passed, the proposed charter's mixed plan of five single-member districts and two at-large seats would be a constitutionally adequate legislative remedy. However, the voters defeated the charter referendum. Accordingly, the District Court entered its own remedial plan, which consisted exclusively of five single-member districts. It held that another 5-2 plan urged by the county commissioners was not entitled to legislative deference, because the state constitution forbids a noncharter county from using any method other than at-large elections.

Appellants' first contention is that, notwithstanding the explicit specification of at-large voting for noncharter county commissions, state authority for the incumbent commissioners to adopt a new election system can be inferred from the Florida Constitution. Both lower courts rejected this strained interpretation of state law.

Appellants' second contention is that the District Court should have accorded their 5-2 plan legislative deference regardless of whether state law authorized the county commission to change its own election system. This position is contrary to the holding of *Wise v. Lipscomb*. If it were accepted by the Court, it would directly repudiate the will of Escambia County's electorate and would otherwise invite unnecessary federal court interference in the state's constitutional procedures for determining local election structures.

Finally, Appellants contend that *McDaniel v. Sanchez*, 452 U.S. 130 (1981), has overruled *Wise v. Lipscomb*. This simply is incorrect. *McDaniel v. Sanchez* was concerned solely with interpreting the coverage of Section 5 of the Voting Rights Act and did not consider the issue in *Wise v. Lipscomb*: whether federal courts should defer to the election systems proposed by local government bodies regardless of their state authority to enact such changes.

ARGUMENT

I. The Appeal Should Be Dismissed For Want Of Jurisdiction.

Appellants base this appeal on 28 U.S.C. §1254(2), claiming to be parties "relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States." But the Court of Appeals has not held any state statute to be invalid in the instant case. Section 1(e) of Article VIII of the Florida Constitution. J.S. 123a, which provides for at-large county commission elections in noncharter counties, has not been invalidated. Rather, the Court of Appeals has held that relevant local officials of Escambia County, for invidious racial reasons, have chosen not to exercise the option afforded by the home rule provisions of the state constitution to change to single-member districts. J.S. 20a and n.19. Accordingly, the conditions of 28 U.S.C. §1254(2) are not satisfied, and this appeal should be dismissed. See *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 103 S.Ct.

948 (1983); *Lockwood v. Jefferson Area Teachers' Ass'n*, 103 S.Ct. 27 (1983).

Appellees realize that, even though the Court lacks jurisdiction of this appeal under 28 U.S.C. §1254(2), in its discretion it could treat the appeal papers as a petition for writ of certiorari and review the case nonetheless. *Perry Education Ass'n v. Perry Local Educators' Ass'n, supra*, 103 S.Ct. at 954. However, for the following reasons, certiorari should be denied. *See Lockwood v. Jefferson Area Teachers' Ass'n, supra.*

First, with respect to the liability issues, the judgment of the Court of Appeals is grounded solely on the fourteenth amendment. J.S. 3-5a n.2, 29a. If this Court were to reverse the constitutional ruling, it still would be necessary to remand for consideration of the statutory claim under the amended Section 2 of the Voting Rights Act.[4] *See Cross v. Baxter*, 103 S.Ct. 1515 (1983). Appellees do not presume that this Court would be inclined to address the amended Voting Rights Act issues when it has not been considered by either court below. Accordingly we will not discuss in this brief how the findings of fact made by the trial court satisfy the "results" standard established by Congress under the amended Section 2.[5] If the Court does wish to review the statutory issue on the merits at this time, we suggest that the parties be so notified and that additional briefs be requested.

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[4]The District Court grounded its judgment on the unamended Section 2 of the Voting Rights Act, as well as on the Constitution. J.S. 101a. The Court of Appeals thought that Appellees had "presented a cogent argument that the amended Act entitles them to relief," but declined to reach the statutory question. J.S. 4-5a n.2. 42 U.S.C. § 1973 (1976), as amended by Pub.L. 97-205, 96 Stat. 131 (1982) took effect upon enactment, i.e., June 29, 1982, and should apply to pending litigation. *See generally Hutto v. Finney*, 437 U.S. 678, 694-695 n.23 (1978); *Bradley v. Richmond School Board*, 416 U.S. 656 (1976); *Cort v. Ash*, 422 U.S. 66 (1960); *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 1032 (1801). Both the House and Senate Floor Managers stated that "Section 2 . . . will, of course, apply to pending cases in accordance with . . . well established principles . . ." 128 Cong. Rec. H3841 (daily ed. June 23, 1982) (remarks of Rep. Sensenbrenner); 128 Cong. Rec. S. 7095 (daily ed. June 17, 1982) (remarks of Sen. Kennedy).

[5]Senate Report No. 97-417, 97th Cong., 2d Sess., p.27 (1982).

Second, the remedy issues Appellants seek to raise are, on the facts of this case, clearly without merit. The courts below properly rejected the county commissioners' contention that they could exercise home rule legislative powers that the voters had denied them in two recent charter referendums. By challenging these rulings, Appellants are asking the Court to disregard the state constitution and to inject itself unnecessarily in a question the Florida Legislature is about to consider regarding the proper allocation of power to change county commission election systems.

Moreover, because another election plan was adopted by the District Court in 1983, resolution of the issues presented concerning the 1979 plan may not finally dispose of the remedy issues now pending in the Court of Appeals. See fn.69 *infra*.

II. The Judgment Below, Grounded On The Fourteenth Amendment, Should Be Affirmed, Because The Trial Court's Factual Findings Of Racial Motives Behind The Appellants' Decision To Retain The At-Large Scheme Are Not Clearly Erroneous.

The Court of Appeals affirmed the District Court's finding of a fourteenth amendment violation because the trial judge squarely had addressed the question of intent and had found, as a matter of fact, that the county commissioners had decided to retain the dilutive at-large system, at least in part, for racial motives. J.S. 21-22a. The District Court's inquiry into the purpose of the election plan was specific and carefully focused. This was not a case, like *Rogers v. Lodge*, 102 S.Ct. 3272 (1982), where the court inferred invidious intent solely from the broad circumstances of longstanding official discrimination against blacks in the local community.[6] Rather, the District Court in the instant case looked in the eyes of the local officials who, at the time of trial, had been responsible for the latest decisions to reject single-member district proposals and did not believe their nonracial explanations. J.S. 96-98a. The court

[6]102 S.Ct. at 3279-81.

found, again as matters of pure fact, that the recent racially motivated actions of the Appellants were only the latest in an unrelieved series of changes in the election structure, extending over 100 years, that were intended to deny black citizens the opportunity to elect county commissioners of their choice. J.S. 73-77a, 92-93a, 96-98a. The District Court further buttressed its findings of intent by considering all of the circumstantial factors enunciated in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,[7] including exhaustive evidence of the present adverse impact of the at-large scheme on blacks' voting strength. J.S. 79-92a.

Under *Rogers v. Lodge*[8] and *Pullman Standard v. Swint*,[9] the District Court's findings of racial intent may not be disturbed unless they are clearly erroneous. Considering the depth and comprehensiveness of the evidence supporting the trial judge's findings here, the judgment should be affirmed.

The district judge was able to hear the testimony and observe the demeanors of four of the county commissioners on the stand. J.A. 470, 495, 507, 532. He did not believe their purported nonracial reason for striking down the district election proposals. J.S. 96-98a. Not only was this critical finding on the question of credibility buttressed by all the *Arlington Heights* circumstantial evidence, but glaring inconsistencies effectively impeached the Appellants' testimony.

The race-neutral reason alleged by the commissioners for striking the single-member district proposals was to avoid the "individual little kingdoms" that supposedly had existed under the pre-1954 district system. J.A. 511; *accord,* J.A. 481, 498, 540. But cross-examination revealed that even under the existing at-large system each of the county commissioners was running the same little kingdom, because he exercised final control over the road and bridge funds allocated to his residency subdistrict. J.A. 473-74, 478-79, 487, 498, 514, 520, 523-24.

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[7] 429 U.S. 252 (1977).
[8] 102 S.Ct. at 3278.
[9] 102 S.Ct. 1781 (1982).

There were other contradictions in Appellants' testimony. Commissioner Deese, who as a charter committee member had "go[ne] over the charter word by word to see what needed to be adjusted," J.A. 510, could not explain why, with no objections, he had signed the unanimous committee report urging the adoption of single-member districts and then reversed his position when the charter came before the county commission. J.A. 510, 528-30. One of the commissioners had not consulted or heard from black citizens concerning their feelings about the election structure. J.A. 488, 492. Three testified that they would not consider blacks' vote dilution in deciding their preference for election plans. J.A. 490, 492, 504, 530-31. Commissioner Kenney's testimony at trial directly contradicted the views he had expressed at the public hearing.[10]

It is important to notice that the purportedly nonracial justification of trying to maintain their incumbencies was not even mentioned by the county commissioners on the stand. It appeared for the first time in a post-trial memorandum filed by their counsel. J.S. 98a. In other words, their post-trial memorandum impeached the commissioners' "little kingdom" explanation at trial. This was the point made by the district

[10]At trial, Mr. Kenney took this view of changes in the commission's responsibilities:

> I voted for countywide representation. I voted for it basically on the premise that there are issues and problems that transcend district lines and perhaps did not exist, these problems did not exist in, prior to 1950 when the old road boards were in operation.

J.A. 540. But previously, at the public hearing, Mr. Kenney, responding to a black citizen's plea for single-member districts, had viewed the modern problems in the opposite light:

> I think you have a very valid point, and I am not really very strong on county wide thing myself. I don't really feel it is that important. I feel like to a degree, it is kind of a hang over from the old Road Board that this Commission used to be where the Commissioner's only job was to take care of paving roads in a certain district and that was all he had to worry about. We have progressed quite a ways since then, where we deal with municipal problems a great deal more since ⅔'s of our population lives outside the city limits and still wants municipal services.

J.A. 1135.

judge, who wrote that independently he had found the commissioners' good government justifications to be unbelievable. *Id.* Instead, the trial judge concluded, the commissioners' motive for rejecting the proposals for single-member districts "was to continue the present dilution of black voting strength" so that none of them could be replaced by a black candidate. *Id.*

Such a motive is not, as Appellants now contend, race-free. The District Court did not ground its finding of invidious intent on the incumbents' motive to exclude all other potential candidates, but on their intent to exclude black potential candidates in particular.[11] This is no different than the finding upheld by this Court in *Rogers v. Lodge*. But whereas the trial judge in *Rogers* had to infer from total legislative inactivity that state lawmakers intended to retain Burke County's at-large system in order to minimize black political strength, 102 S.Ct. at 3280, the district judge in the instant case could base the same finding on specific legislative events and the opportunity to observe the testimony of the relevant officials.[12] J.S. 77a, 96a-98a.

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[11]

> To this court the reasonable inference to be drawn from their actions in retaining at-large districts is that they were motivated, at least in part, by the possibility single district elections might result in one or more of them being displaced in subsequent elections by blacks.

J.S. 98a. The evidence reveals at least one occasion when the commissioners were squarely confronted with this prospect. At the public hearings, a black precinct committeeman said to them:

> Thank you. The very first part where it says five members elected county wide. County wide automatically kills it for me because eventually I plan on running maybe for one of your jobs. As long as it is county wide, I can never beat Jack Kenney out.

J.A. 1133.

[12]Although Justice Stevens would not invalidate any electoral device simply because the elected officials were "motivated by a desire to retain control of the local political machiney," *Rogers, supra*, 102 S.Ct. at 3292 (J. Stevens, dissenting), the findings in the instant case satisfy even his standards. The Appellant Commissioners made no attempt to justify an at-large scheme that employed both a majority-vote and numbered place requirements in the primary, "device[s] that serve[] no purpose other than to exclude minority groups from effective participation. . . ." Id.

The District Court's findings here are grounded on virtually every type of direct and circumstantial evidence that this Court has referred to in its decisions concerning discriminatory intent. Indeed, in the section of its opinion devoted entirely and explicitly to the issue of intent, the District Court was guided by the criteria of *Arlington Heights*.

> In *Arlington Heights* the Supreme Court set out several factors indicative of discriminatory intent. They are (1) the effect of the official action, (2) the historical background of the decision, "particularly if it reveals a series of official actions taken for invidious purposes," (3) the sequence of events, (4) substantive and procedural departures, (5) legislative history. 429 U.S. at 266-68. These criteria must be applied to the official act or acts which give rise to the respective election systems in this case.

J.S. 92a. There was credible evidence of each of these five elements, in addition to the trial judge's actual observation of the commissioners' testimony, supporting his finding that the at-large plan has been maintained for racially discriminatory purposes. Moreover, the District Court "bolstered" its findings of racial intent by an analysis of the circumstantial evidence using the criteria that have been approved in *Rogers v. Lodge*. J.S. 98a.

Appellants also contend that a post-trial, post-judgment charter referendum held in 1979, in which home rule was again rejected by the voters, this time based on a charter proposal that included a 5-2 single-member district and at-large mixed election plan, means that the racial motives of the incumbents in 1975 and 1977 are no longer responsible for the maintenance of the discriminatory election plan. Appellants' Bf. at 31-32. This argument is flawed for at least two reasons. First, the at-large system had been adjudged unconstitutional before the 1979 referendum election took place, and the calling of another referendum election on charter government could not, by itself, meet the state's legal obligation to afford a remedy. Second, even if there had been no prior judicial ruling, if the 1975 and 1977 official actions actually violated blacks' constitutionally protected voting rights, that denial of rights could not be cured "by a vote of a majority of [the county's] electorate." *Lucas v. Forty-fourth General Assembly of Colo.*, 377 U.S. 713, 746 (1964).

(1) *Adverse Impact.*

"The impact of the official action — whether it 'bears more heavily on one race than another' — may provide an important starting point [for a sensitive inquiry about intent]." *Arlington Heights, supra,* 429 U.S. at 266, *quoting Washington v. Davis,* 426 U.S. 229, 242 (1976). The District Court found "that the voting strength of blacks is effectively diluted under the present election systems of the county and city." J.S. 90a (footnote omitted). According to *Rogers v. Lodge, supra,* 102 S.Ct. at 3279, evidence that a distinct racial minority consistently has its candidates defeated by a bloc-voting white majority "bears heavily on the issue of purposeful discrimination." In the instant case, the District Court arrived at this finding after considering "[t]he complete record of county elections since 1955. . . ." J.S. 81a. This massive record was analyzed by an expert statistician and by a political scientist. Numerous black candidates testified about racial bloc voting, discouragement, threats and intimidation which they encountered in their campaigns. Substantial evidence was introduced about black turnout and political participation and about the social and economic disabilities of the black community in Escambia County.

Unrebutted evidence of sharply polarized voting along racial lines was presented to the District Court. An expert statistician[13] analyzed the correlations between the vote received by given candidates in each election precinct with the percentage of registered voters in that precinct who were black, with the median income of residents in the precinct, with party affiliation and with gender of the registered voters. J.A. 733-50, 1277. Step-wise multiple regression analyses[14] of these data were per-

[13]Dr. David Curry, Assistant Professor of Sociology, University of South Alabama. J.A. 1267. Dr. Curry was qualified by the District Court as an expert in the sociological and demographic applications of statistics. J.A. 1268.

[14]Multiple regression analysis is an accepted statistical technique, "a quantitative method of estimating the effects of different variables of interest." *Eastland v. TVA,* 704 F.2d 613, 621 (11th Cir. 1983), *citing* Fisher, "Multiple Regression in Legal Proceedings," 80 Colum.L.Rev. 702 (1980). *See also, Gregg v. Georgia,* 428 U.S. 227, 234 (1976) (J.

formed. *Id.* In modern times, black persons had sought election to the Escambia County Commission on four occasions, to the school board on five occasions, and to the Pensacola City Council on nineteen occasions. J.S. 107-13a. A total of 168 regression analyses were performed.[15] Computer-generated "scatter diagrams," J.A. 751-54, visually displayed what the expert political scientist[16] called "irrefutable" evidence of racially polarized voting. J.A. 421. In addition, the political scientist studied raw election returns, visited Escambia County five times, conducted over twenty in-depth interviews of politically knowledgeable persons in Escambia County, and did background reading in local newspapers and publications. J.A. 401. Based on all this information, he expressed the opinion that, under the at-large system, the votes of black citizens in Escambia County were diluted, in that their electoral preferences were submerged consistently by the bloc-voting white majority. J.A. 403.

The District Court heard extensive testimony from black candidates. J.A. 255-310, 334-74. They were uniformly discouraged from making further attempts as candidates in countywide at-large elections. J.A. 419, 422-25. The consistent defeat of blacks in the past and the high financial cost of countywide campaigning when compared with the paucity of financial re-

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Marshall, dissenting). In particular, regression analysis is an acknowledged method for displaying racial bloc voting. *See Major v. Treen*, ____ F.Supp. ____, Manu.Op. at 30 (E.D.La., Sept. 23, 1983) (3-judge court); *Bolden v. City of Mobile*, 423 F.Supp. 384, 388 (S.D.Ala. 1976), *aff'd*, 571 F.2d 238 (5th Cir. 1978), *rev'd and remanded on other grounds*, 446 U.S. 55 (1980), *on remand*, 542 F.Supp. 1050 (S.D.Ala. 1982).

[15]Pl. Exs. 13-16. All the regression analysis results are summarized at J.A. 771-98. A summary of the analyses only of those elections in which blacks were candidates is appended to the District Court's opinion. J.S. 107-13a. In the county commission elections involving black candidates, the correlation coefficient between race of registered voters and vote obtained by the candidates ranged from 0.85 to 0.98. J.S. 107a. A correlation coefficient of .5 is considered to be unusually high in social science data. J.A. 1274-76.

[16]Dr. Charles Cotrell, Professor of Political Science, St. Mary's University, San Antonio, Texas. J.A. 398. Dr. Cotrell was accepted by the court as an expert in the field of political science. J.A. 398, 400.

sources in the black community were the reasons given.[17] Just as discouraging for black candidates in Escambia County has been the hostility of the white electorate, much of it openly expressed. Charlie Taite, knowing that he needed white votes to win, campaigned door-to-door in white neighborhoods wearing common work clothes, so that he would not seem like a "busybody" and arouse a white backlash. J.A. 264. Rev. Otha Leverette received death threats over the telephone, J.A. 278, and when he tried to conceal the fact that he was black during the general election, his own party published his picture in campaign literature. J.A. 274-75. Dr. Donald Spence also testified to having received telephone threats, as well as other activities directed against him by the Ku Klux Klan. Vol. XVI 558, 565. F. L. Henderson received telephone threats, had the windows of his car destroyed and found a dead cat hung on the door of his home. Vol. XVII 633. Elmer Jenkins received threatening phone calls and had difficulty finding campaign workers who were not afraid of going into the white neighborhoods. Vol. XVII 733, 753. Nathanial Dedmond, a local black attorney, was threatened over the telephone during his campaign. J.A. 353. James Brewer was unsuccessful in his attempts to solicit financial support in the white community. Vol. XVII 802-04. Charlie Taite testified that he had been offered $10,000 to drop out of the election and lost his job when he refused. Vol. XVI 363.

The testimony of black politicians confirmed the feeling of futility and discouragement the political scientist had found among his interviewees. J.A. 419. In his opinion, the reluctance of qualified black citizens to offer as candidates was another manifestation of the inability of the black electorate to have any of its preferences expressed in the political process. *Id.* He found this sense of futility and lack of interest expressed in the turnout data. It shows that black voters turn out at much lower rates than whites except when there are black candidates,

[17]Taite, J.A. 271; Leverette, J.A. 275, 277; Spencer, J.A. 289, 302-03; O. Marshall, J.A. 335-36; Henderson, J.A. 339; Jenkins, J.A. 347; Dedmond, J.A. 351; Hunter, Vol. XVII 784; Brewer, Vol. XVII 802-04.

in which event the black turnout rate has been equal to or higher than the white turnout rate. J.A. 421-432. Governor Rubin Askew, who testified at trial about his involvement, as a freshman state legislator from Escambia County, in the 1959 change of election systems for city council, agreed with the political scientist that lack of fair representation explains the discouragement within the black electorate:

> I have come to believe and believe very strongly that while single-member districting will not require necessarily fair representation among minorities, in my opinion it is the single most important step you can take to better insure representation by minorities. . . . I personally feel that if black people in this case, other minorities, if they are not afforded an opportunity through single-districting to speak and elect some of their own people to the Boards, which that government is supposed to represent them, I don't know how we can say that government is truly representative of all the people. . . . We need more minority representation on government if government is supposed to fairly represent them and if we want young black people in particular to feel they are part of the system. Then they have got to be given a chance in a fair way and not be outvoted with a larger majority.

J.A. 467.

The evidence detailing blacks' current lack of access to the political process in Escambia County followed extensive testimony by two respected Florida historians[18] about the long history of violence, physical and economic intimidation, segregation and official oppression that had marked the previous one hundred years of Florida's history. Based on this evidence the

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[18]Dr. Jerrell Shofner, Professor and Chairman of the Department of History, Florida Technological University, Orlando. J.A. 146. Dr. Shofner has researched and written extensively on Florida history during the Reconstruction and post-Reconstruction periods. J.A. 147. At the time of his testimony in this case, he was serving as President of the Florida Historical Society. *Id.*

Dr. James McGovern, Associate Professor of History, University of West Florida, Pensacola. Pl. Ex. 3. Dr. McGovern was the officially designated Bicentennial Historian for the City of Pensacola. Pl. Ex. 4.

District Court found that during the Jim Crow period in Florida "the white government was unwilling or unable to prevent a shocking degree of violence and intimidation suffered by blacks at the hands of whites." J.S. 93a. Although the modern forms of intimidation described at trial were not as brutal, perhaps, as those of the past, they remain, nevertheless, a real and substantial additional burden for blacks seeking to participate in Escambia County's political process today. The expert political scientist spoke of the "shadow of history" that still hangs over black political participation. J.A. 423.

The District Court also received extensive evidence about the depressed socio-economic condition of the black community in Escambia County, which, under *Rogers v. Lodge, supra,* 102 S.Ct. at 3280, is further evidence that the at-large system has a racial purpose. J.A. 799-1036. Mr. DeVrees, City Planner for Pensacola, admitted that neighborhood blight, including deteriorating housing, poor streets, and lack of recreational facilities, closely correlates with the proportion of blacks in the neighborhood population. Vol. XIX, 1123-24. Mr. Page, a senior planner with the West Florida Regional Planning Commission, testified that his survey of drug abuse, unemployment, poor housing conditions, lack of recreational facilities, crime, welfare, mental health, youth services, fire, tuberculosis and venereal disease also correlated with the proportion of blacks in each neighborhood. Vol. XXI, 1635. Considering all this evidence, the District Court entered the following findings of fact:

> State enforced segregation and discrimination have helped create two societies in the city and county — segregated churches, clubs, neighborhoods and, until a few years ago, schools. These laws left blacks in an inferior social and economic position, with generally inferior education. The lingering effects upon black individuals, coupled with their continued separation from the dominant white society, have helped reduce black voting strength and participation in government.

J.S. 86a. Similar findings of "lingering effects of past discrimi-

nation" were approved in *Rogers v. Lodge, supra,* 102 S.Ct. at 3280.

Finally, with regard to the adverse impact of the at-large system, the District Court found "independent significance" in the severe underrepresentation of blacks on appointed county boards and committees. J.S. 90a. *Accord, Rogers v. Lodge, supra,* 102 S.Ct. at 3280. "With such a paucity of black elected and appointed representatives, blacks are excluded from almost all positions of responsibility in the governmental policymaking machinery." J.S. 90-91a.

(2) *The Historical Background.*

The racially motivated charter decisions of the county commissioners were only the latest of a series of invidiously intended legislative election changes.

The District Court made explicit findings of fact that Florida's official policy from 1868 until at least 1954 was to maintain a county commission election structure that assured that no black person could be elected. Under *Arlington Heights,* 429 U.S. at 267, "[t]he historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes." (Citations omitted). Similarly, *Rogers v. Lodge* relied on "the impact of past discrimination on the ability of blacks to participate effectively in the political process." 102 S.Ct. at 3279.

The following chain of decisional responsibility[19] was established for the election system used in Escambia County:

(1) From 1868 to 1901 the county commissioners were appointed by the governor "to ensure against the possibility that blacks might be elected in majority black counties." J.S. 74a, 16a. The delegates to the 1868 and 1885 Florida Constitutional Conventions were responsible for the development and maintenance of this system. J.A. 154-59.

[19]The District Court's findings cannot be faulted for "failure to identify the state officials whose intent it considered relevant." *Rogers v. Lodge, supra,* 102 S.Ct. at 3281 (J. Powell, dissenting), *quoting City of Mobile v. Bolden,* 446 U.S. 55, 74 n.20 (1980).

(2) In 1901 sufficient numbers of blacks had been disfranchised to make white supremacists feel safe about returning the selection of county commissioners to the electorate, and the state constitution was amended to provide for at-large general elections. J.S. 74a. The historical sequence of events and the contemporaneous passage of Jim Crow laws indicated to the district court a racial motive in the adoption of at-large elections. J.S. 92a-93a; Dist. Ct. Op. p. 24.[20] But it declined to find a racial intent behind the adoption of the 1901 constitutional amendment, primarily because the Fifth Circuit previously had held that there could be no racial motive when blacks were already disfranchised.[21]

(3) Both the primary and general elections were apparently conducted on an at-large basis for one election. J.A. 173. But a 1907 statute changed the primary elections to single-member districts, leaving the general elections to be held at large. *Id.* Because the Democratic primary was for whites only and was in effect the only election that counted, the district court found that the "anomaly" of a districted primary and an at-large general election "worked, not surprisingly, to the unique disadvantage of blacks," J.S. 75a, was "clearly race related," J.S. 92a, and was part of "a concerted state effort to institutionalize white supremacy," J.S. 74a. This "dual"[22] election system for county commissioners remained in effect in Escambia County until 1954. Then, in the wake of judicial rulings striking down the all-white primary, the state courts declared that single-member district primaries were inconsistent with the 1901 state constitutional amendment requiring county commissioners to be

[20]Page 24 of the district court's opinion is omitted in the Jurisdictional Statement at p. 92a, after the words "The sequence of". Page 24 of the opinion is reproduced as an appendix to this brief.

[21]J.S. 93a, and Dist. Ct. Op. p. 24, *citing McGill v. Gadsden County Commission*, 535 F.2d 277 (5th Cir. 1976). The District Court also understood Dr. Shofner, Plaintiffs' expert historian, to have "reinforced" the conclusion of *McGill*. *Id.* Actually, Dr. Shofner testified that the elimination of blacks as a political threat is what allowed a return of county government to local control; he did not say that the choice of an at-large scheme had no racial purpose. J.A. 195-96.

[22]J.S. 19a.

elected at large. J.S. 75a-76a. The Florida Legislature and the Democratic Party bore the responsibility for the exclusion of blacks from the real election for county commissioners, which was conducted by single-member districts. J.A. 173-74.

(4) Since 1954, Escambia County's election structure could be changed only by the adoption of home rule, charter government (unless, of course, the state constitution itself were amended). The incumbent county commissioners controlled what charter propositions would be submitted to Escambia County's voters, and the district court found that the commissioners acted with racial motives when in 1975 and again in 1977 they rejected proposals by their own appointed charter committees to change to district elections. J.S. 77a, 96a-98a.

It is important to keep in mind, as the District Court did, that until post-World War II federal intervention began reinfranchising black voters, state policy favored single-member district elections for all three major local government bodies in Escambia County. J.S. 74a, 86a; Dist. Ct. Op. p. 24.

> At-large requirements have been in effect for general elections of county commissioners and school board members since 1901 and 1895, respectively. However, in the primaries, which were then tantamount to election, the commissioners were elected in single-member districts from 1907 to 1954, and school board members from 1907 to 1947. Half the city council was elected from single-member districts until 1959. Moreover, the evidence shows . . . that there were racial motivations connected with the at-large requirements of each of these election systems.

J.S. 86a. During most of this period black citizens were officially excluded from the electoral process by devices like the poll tax and the white-only Democratic primary. J.S. 74-75a; Dist. Ct. Op. p. 24; J.A. 159-64. See *Rogers v. Lodge, supra*, 102 S.Ct. at 3279. Only after the white primary was struck down in 1945 was there a precipitate swing to an at-large policy. J.S. 75a. In the very next session of the legislature, state law was amended to require use of at-large voting for school boards. J.S. 93a. The District Court agreed with the expert

historian that this 1947 change in the school board election structure was racially motivated. J.S. 93-94a; J.A. 183. Next, in 1953 the Escambia County Circuit Court struck down the single-member district feature of county commission primaries, in a lawsuit brought by "good government" groups backed by the Pensacola Journal.[23] The Florida Supreme Court affirmed the decision in 1954.[24] The District Court did not make a finding that the state courts were racially motivated, but the historian expressed the opinion that the lack of official resistance to the change could be accounted for, at least in part, by the desire to preserve white supremacy.[25] Finally, single-member district elections were eliminated from the city council plan in a 1959 charter amendment. J.S. 78a. Relying in part on an editorial from the Pensacola Journal urging voters to approve the charter referendum,[26] the District Court found a racial motive behind this change as well. J.S. 94a.

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[23]Def. Ex. 12; J.A. 1099.

[24]J.S. 75-76a, *citing Ervin v. Richardson*, 70 So.2d 585 (Fla. 1954).

[25]J.A. 183, 209, 213-14. Dr. Shofner explained:

> I think the point is that it did not upset the desires of the people who were in control in the county at that particular time. I think that, however, whether or not it was initiated for this reason, it served them very well

J.A. 214. The record in *Ervin v. Richardson, supra*, supports Dr. Shofner's opinion. Def. Ex. 12. The case was adjudicated from start to finish in two months. The state attorney general intervened solely for the purpose of ensuring statewide uniformity of the election law and did not vigorously defend the fifty-year policy of single-member primaries. The defendant county commissioners did not join the attorney general's appeal, and neither the Democratic Party nor any state political leaders objected. The state supreme court affirmed the circuit judge even as it acknowledged "that nominations of county commissioners by districts has been the established policy of the State for many years. . . ." 70 So.2d at 587. There was no evidence that any attempt was made after the ruling to amend the state constitution or to take any other action to preserve this "established policy."

[26]The 1959 Journal editorial contained a "smoking gun" admission of the racial motives behind the election change and recalled similar changes in the county commission and school board election methods:

> This would be an advantageous change for at least two reasons. One reason is that small groups which might dominate one ward could not choose a councilman. Thus one ward might conceivably

(3) The Sequence of Events.

"The specific sequence of events leading up to the challenged decision also may shed some light on the decisionmaker's purposes." *Arlington Heights, supra,* 429 U.S. at 267. In finding that the Appellant county commissioners had acted with racial motives when they rejected recent single-member district proposals, the District Court relied heavily on the sequence of events. J.S. 77a, 96a. First one and then a second commission-appointed charter committee recommended different forms of districted systems.[27] Blacks appealed to the commissioners in public hearings to accept the committee's proposal for the sake

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elect a Negro councilman, although the city as a whole would not. This probably is the prime reason behind the proposed change.

However, the best argument for the change, the one which we offer, is that all councilmen would be responsible to all city voters, not merely to those in their particular section. Councilmen should have a city-wide viewpoint, not a localized outlook.

We favored such representation in the county, both for school board members and for county commissions. Prior to the Minimum Foundation Law, school board members were chosen by districts, equivalent to city wards. This change was helpful as it widened horizons and banished petty district politics. A vote in Century became as important as a vote in Pensacola.

Later, the News Journal attempted by legislation to have county commissioners elected county-wide, instead of by districts, because the district plan made each commissioner more concerned with his district while roads and other problems crossing district lines were neglected. Legislation failed, but a suit brought by citizens resulted in the Supreme Court deciding the district election was invalid. Now commissioners over the state are chosen by county-wide vote and we think it has resulted in great improvement.

J.A. 1098-99. The editors' juxtaposition of black vote dilution and good government theories illustrates perfectly the point made by Dr. Shofner about policies of this period:

> Mr. Cash, the historian of the Democratic Party in '36, talked about good government in terms of cleaning up the electorate by keeping blacks out of it. I think that that is more satisfactory to a person to say than to say, "Let's disenfranchise blacks."

J.A. 183-84.

[27] The 1977 charter committee recommended a five-member county commission with all five elected from single-member districts. J.A. 1233. The 1975 charter committee had added two at-large seats to the five from single-member districts to "provide balanced representation." J.A. 1201.

of fair minority representation. J.A. 1131-41. One commissioner voted for the change as a charter committee member, but later all five commissioners voted to strike the single-member districts before the charter was submitted to the voters. J.A. 528-30.

(4) *Procedural and Substantive Departures.*

The District Court noted that two separate charter committees were appointed by the county commission, and that even after the second committee came back with a single-member district recommendation, Appellants still refused to submit the election change to the voters. J.S. 77a, 96a. "Departures from the normal procedural sequence . . . [and] [s]ubstantive departures too may be relevant, [to a determination of intent]." *Arlington Heights, supra,* 429 U.S. at 267.

(5) *The Legislative History.*

"The legislative . . . history may be highly relevant, especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." *Arlington Heights, supra,* 429 U.S. at 268. The reports of the charter committees, J.A. 1195-1227, and the transcript of one public hearing conducted by the county commission, J.A. 1131, were introduced in evidence. They show that Appellants made no attempt to respond to the carefully articulated reasons given by the charter committee for favoring district elections.[28] In particular, the committee squarely rebutted the rationale Appellants gave the District Court. Compare J.S. 77a with J.A. 1201:

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[28]

> District representation will cut the mounting cost of running for Countywide election, and the increasing reliance on special interest for financing. The districts will also insure meaningful representation and allow close identification and scrutiny of the district Commissioners. The district Commissioners will be closer to the people who elected them and more responsive to district problems and needs. The district Commissioners will have a ready and in-hand knowledge of their districts.

J.A. 1201.

> There may be an argument that district Commissioners may be responsive to district pressures first and consider vital Countywide matters second. It is based upon the assumption and not fact that the County Commission can only act as a unit in passing County laws or establishing policy or issuing administrative directives.

Finally, "members [of the decisionmaking body were] called to the stand at the trial to testify concerning the purpose of the official action. . . ." *Arlington Heights, supra*, 429 U.S. at 268. As discussed, *supra* at pp. 10-3, the district judge was able to gauge the commissioners' credibility by direct observation. When, as here, the factfinder's conclusion is supported by literally every conceivable kind of direct and circumstantial evidence, there is no basis for disturbing it on appeal.

III. The District Court's Findings Provide Additional Constitutional Grounds For Affirming The Judgment Of The Court Of Appeals.

The Court of Appeals affirmed the judgment under the fourteenth amendment on the ground that the District Court did not clearly err in finding that the incumbent county commissioners acted, in part, with racial motives when they struck districted elections from the 1975 and 1977 charter proposals. J.S. 20-22a. The Court of Appeals did not decide whether the District Court's other findings supported its conclusions that judgment for Plaintiffs could be grounded on (unamended) Section 2 of the Voting Rights Act and the fourteenth and fifteenth amendments. See J.S. 100-101a. For reasons stated at p. 9 *supra*, we have not briefed the statutory issue. But if the Court decides to review the constitutional issues, it ought to consider the additional fourteenth and fifteenth amendment bases for affirming the judgment below.

A. *The Judgment Below May* ***Be Affirmed Under the Fifteenth Amendment, Because the At-Large Scheme Was Adopted Through a Referendum Election in Which Black Citizens Were Denied the Right to Vote.***

In its opinion on rehearing the panel stuck by the view expressed by the plurality in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), that vote dilution cases are not cognizable under the fifteenth amendment. J.S. 4a n.2. However, in this Court, given the peculiar facts of this case, the fifteenth amendment affords an alternative ground for affirming the judgment below, a ground that would satisfy even the standard of the *Bolden* plurality.

It is undisputed that in the last two decades of the nineteenth century the State of Florida enacted constitutional and statutory measures designed to disfranchise its black citizens and that by 1900 only a few blacks were still registered. J.S. 74a; J.A. 159-61. Ironically, in the instant case this massive official denial of blacks' voting rights has disadvantaged their ability to obtain relief. Adhering to an earlier precedent,[29] both lower courts concluded that, because of the need to prove invidious intent, the elimination of blacks as a statewide electoral threat foreclosed the possibility that the 1901 constitutional amendment mandating at-large voting in the general election for county commissioners could have been adopted in violation of the fourteenth amendment. J.S. 20a n.18, 93a and n.8.

By holding that the "race-proof"[30] origin of the election scheme constitutionally exonerates its continued use, the courts below have overlooked the line of cases that command federal courts to provide effective remedies for blacks whose fifteenth amendment right to vote plainly has been denied in state or local elections.[31] These decisions hold that when blacks pur-

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[29]*McGill v. Gadsden County Commission*, 535 F.2d 277 (5th Cir. 1976).

[30]*Bolden v. City of Mobile*, 571 F.2d 238, 245 (5th Cir. 1978), *rev'd and remanded*, 446 U.S. 55 (1980), *on remand*, 542 F.Supp. 1050 (S.D. Ala. 1982).

[31]*Bell v. Southwell*, 376 F.2d 659 (5th Cir. 1967); *Hamer v. Campbell*, 358 F.2d 215 (5th Cir. 1966); *Alabama v. United States*, 304 F.2d 583

posefully have been denied the right to participate in an election, a *per se* fifteenth amendment violation is established, and "the sole question remaining is the sort of relief to be granted."[32] Providing such relief, the federal court of equity "may use any available remedy to make good the wrong done."[33]

Appellees do not contend that every legislative action taken during the period when blacks were officially disfranchised must be voided or that all elections conducted during this period should be set aside. But in this case there is a direct, undeniable connection between the undisputed fifteenth amendment violation and the 1901 legislative adoption of the election structure being challenged. Because the at-large scheme was installed through an amendment to the state constitution, the electorate was an integral part of the legislative process. Thus blacks were officially barred from the decision to adopt the very same state law that they have demonstrated to be a present cause of their exclusion from the political process in Escambia County. The 1901 statewide referendum election ought not be voided altogether eighty years later. But federal courts are not powerless to provide a remedy in those counties, like Escambia, where the state cannot demonstrate affirmatively that the unconstitutionally established at-large structure no longer disadvantages the class of black citizens.[34]

(5th Cir. 1962); *Toney v. White*, 348 F.Supp. 188 (W.D. La. 1972), *aff'd in part and rev'd in part*, 476 F.2d 203, *modified on rehearing*, 488 F.2d 310 (5th Cir. 1973) (en banc).

[32]*Bell v. Southwell, supra*, 376 F.2d at 662.

[33]*Alabama v. United States, supra*, 304 F.2d at 590, *quoting Bell v. Hood*, 327 U.S. 678, (1946).

[34]*Cf. Gomillion v. Lightfoot*, 364 U.S. 339, 347-48 (1960). Once invoked, "the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Milliken v. Bradley*, 433 U.S. 267, 281 (1977), *quoting Swann v. Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1, 15 (1971).

B. *The Judgment Below May Be Affirmed Under the Fourteenth Amendment, Because For Half a Century the At-Large Election Was Part of the State's Design to Exclude Blacks From the Political Process.*

In addition to its findings about state actions in the 1970's intended to retain a racially discriminatory election system, the District Court found that, at least during the period from 1907 to 1954, the maintenance of at-large voting in the general elections for county commissioners was part of "a concerted state effort to institutionalize white supremacy." J.S. 74a. The District Court found that, following the successful efforts late in the nineteenth century to disfranchise Florida's black citizens,

> [b]lack participation in the electoral process was further hampered by the Jim Crow laws and the exclusion of blacks from the Democratic Party, both of which began in 1900. A few years later, the state provided for primary elections of county commissioners . . . in which the candidates were elected from single-member districts. 1907 Fla. Laws, Ch. 5697, §1. By that time the white primary system, effectively disfranchising black voters, was firmly established. The resulting anomaly between having district primary elections and at-large general elections worked, not surprisingly, to the unique disadvantage of blacks. Since blacks could not vote in the Democratic Primary district elections, they were forced to challenge white Democratic nominees in at-large elections in which blacks had no voter majorities. In effect, the white primary was the election.

J.S. 75a.

These findings establish two critical points: (1) for nearly fifty years, state policy favored the use of single-member districts for the election of county commissioners, and (2) by maintaining an at-large system in the general elections, Florida denied black citizens as a class the opportunity to participate in single-member district elections. Such a situation is in relevant respects constitutionally indistinguishable from Florida's

contemporaneous maintenance of *de jure* school segregation.[35] There was a "dual"[36] county commission election system as well as a dual school system. Florida removed its official imprimatur from the dual election system in 1945 by opening the Democratic primary to blacks.[37] But it did not carry out in the election area the same affirmative obligation it had in the schools to "dismantle" or "disestablish" the racially discriminatory vestiges of the *de jure* system. *See Green v. County School Board (New Kent County)*, 381 U.S. 430, 437-40 (1968).[38] Instead, in 1954 the state merely eliminated the single-member district feature of the primary elections.[39] In light of the district court's finding that present-day racially polarized voting in Escambia County "result[s] from the prior state enforced segregation of the races," J.S. 87a, the imposition of at-large schemes in both the primary and general elections perpetuated the prior official exclusion of blacks from the political process in the same way that freedom of choice policies perpetuated *de jure* school segregation.[40]

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[35]*E.g., Augustus v. Board of Public Instruction of Escambia County*, 306 F.2d 862, 869 (5th Cir. 1962).

[36]J.S. 19a.

[37]J.S. 75a, citing *Davis v. State ex rel. Cromwell*, 156 Fla. 181, 23 So.2d 85 (1945).

[38]The disestablishment principle of *Green* was applied in the context of discriminatory election systems in *Kirksey v. Board of Supv'rs of Hinds County*, 554 F.2d 139, 144-45 and n.12 (5th Cir.) (en banc), *cert. denied*, 434 U.S. 968 (1977). *See also*, Note: "Making the Violation Fit the Remedy: The Intent Standard and Equal Protection Law," 92 Yale L.J. 328, 346-47 n.113 (1983).

[39]J.S. 75-76a, citing *Ervin v. Richardson*, 70 So.2d 585 (Fla. 1954).

[40]*Green v. County School Bd., supra*, 391 U.S. 437. Just as prior *de jure* segregated school systems are required to do more than merely end official assignment of students on the basis of race, so should a jurisdiction that has institutionalized racial segregation in election structures have an affirmative constitutional obligation to disestablish all its vestiges. *C.f. Keyes v. School Dist. No. 1*, 413 U.S. 189, 200 and n.11 (1973), *citing Swann v. Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1, 15 (1971). *See* Schnapper, "Perpetuation of Past Discrimination," 96 Harv. L. Rev. 828, 855-58 (1983) ("When governmental discrimination creates continuing social or physical conditions, each injury caused by those conditions is a fresh constitutional violation. The appropriate remedy in such cases is not merely to redress specific injuries, but also to disestablish

The maintenance of at-large election structures in both the primary and general elections of county commissioners in Escambia County unconstitutionally perpetuates[41] prior *de jure* exclusion of black citizens from the political process. Because the past official discrimination that is being perpetuated was a dual election system, the causal connection between past acts and present injury to blacks' effective exercise of the franchise is even more direct here than it was in similar perpetuation circumstances condemned by the Court.[42] There is, therefore, even less constitutional justification for allowing the facially neutral at-large system to continue in Escambia County.

C. *Considering Only Objective Factors, the District Court's Findings Support Its Conclusion That the At-large Election System Purposefully Dilutes Blacks' Voting Strength.*

A separate theory for detecting purposeful discrimination behind at-large election laws has been suggested by Justice Stevens. *Rogers v. Lodge, supra,* 102 S.Ct. at 3286-88 (J. Stevens, dissenting). This analysis was not employed by the courts below, but in this Court it affords an alternative ground for affirmance.

Analyzing voluminous, comprehensive evidence of how local elections have operated over two decades, the District Court found that a geographically isolated, politically cohesive racial

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whatever ongoing state of affairs produced those injuries and threatens future harms.").

[41]The particular at-large scheme utilized in the primary elections actually aggravates the racially dilutive effect of the overall election system by injecting a majority vote requirement, which maximizes the strength of the majority in Escambia County. See pp. 32-33 *infra*.

[42]*Rogers v. Lodge, supra,* 102 S.Ct. at 3280 (inferring discriminatory intent, in part, from election practices, "which though neutral on their face, serve to maintain the status quo," where past discrimination was found in non-election areas like jury selection and public hiring); *White v. Regester, supra,* 412 U.S. at 769 (single-member districts properly ordered to remedy broad societal discrimination against Mexican-Americans). *See Hartman,* "Racial Vote Dilution and Separation of Powers: An Exploration of the Conflict Between the Judicial 'Intent' and the Legislative 'Results' Standards," 50 Geo. Wash. L. Rev. 689, 719 (1982).

group has had its electoral choices systematically excluded by a bloc-voting majority. J.S. 79a-84a, 86a-87a. The evidence underpinning this holding went far beyond a mere showing that disproportionately few blacks had been elected, and the court did not merely presume that the inherent tendency of at-large schemes to submerge minority voting strength accounted for their poor showing. Rather, Plaintiffs-Appellees proved that, over a substantial period of time, members of the black community have supported with their votes candidates identified with their interests, but that the white majority, voting as a controlling bloc,[43] had consistently and predictably defeated them.[44] In addition, the parties stipulated that in Escambia County there was sufficient residential segregation to make it probable that at least some of the black voters' choices would prevail in a districted election. J.A. 78.

This Court has held that trial court findings like these go far toward establishing purposeful discrimination, but that they are "insufficient in themselves" absent "other evidence" that blacks do not have an equal opportunity to participate in the political process.[45] Justice Stevens has urged that this "other evidence" be sought out not in the subjective motives of particular officials but in "objective circumstances that . . . would invalidate a similar law wherever it might be found."[46] Justice Stevens has expressed the further view that objective evidence of an unconstitutional at-large election plan may be found in "additional features" or "special features" like the majority vote requirement and numbered places noted by the district court in the instant case.[47] The special features that serve only

[43]Not all majority-race voters voted against the minority's favorites. J.S. 84a. But the courts below correctly held that white crossover voting did not foreclose a finding of majority bloc voting where enough whites could be counted on to vote against the blacks' choice to defeat consistently the combined weight of solid black support plus white crossovers. J.S. 33a-35a n.6.

[44]See pp. 15-18 *supra*.

[45]*Rogers v. Lodge*, *supra*, 102 S.Ct. at 3279.

[46]*Id.* at 3286 (J. Stevens, dissenting).

[47]Compare *id.* at 3287-88 (J. Stevens, dissenting), with J.S. 87a-88a. The special features include designated ballot places, majority vote require-

"to perpetuate the power of an entrenched majority" are not necessary for the intended functioning of an at-large scheme.[48] Even though *White v. Regester*, 412 U.S. 755 (1973), speaks of these special features as "neither in themselves improper nor invidious,"[49] it does not disagree with Justice Stevens' difficulty in finding them "either desirable or legitimate,"[50] particularly "when viewed in combination" and against a backdrop of demonstrated minority vote submergence.[51]

Under this analysis, the district court's findings that the electoral choices of a geographically concentrated racial minority have consistently been excluded over a substantial period by a bloc-voting white majority, coupled with "other evidence" that the at-large scheme has special or additional features that unnecessarily exaggerate the majority's political stranglehold, satisfy an objective measure of an at-large election scheme, viewed in its entirety, as having a legislative purpose to minimize the electoral strength of black voters.[52] The Appellants did not offer at trial any compelling justifications for an election system that clearly is designed to maximize the power of an electoral majority.

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ments, anti-single-shot voting rules and other such provisions, referred to by one commentator as "percentage-determining rules." O'Rourke, "Constitutional and Statutory Challenges to Local At-Large Elections," 17 U. Rich. L. Rev. 39, 92 (1982).

[48]*Rogers v. Lodge, supra*, 102 S.Ct. at 3288 (J. Stevens, dissenting).

[49]412 U.S. at 766.

[50]*Rogers v. Lodge, supra*, 102 S.Ct. at 3288 (J. Stevens, dissenting).

[51]*Id.*

[52]See *Rogers v. Lodge, supra*, 102 S.Ct. at 3283 (J. Powell, joined by J. Rehnquist, dissenting) ("the factors identified by Justice Stevens as 'objective' in fact are direct, reliable, and unambiguous indices of discriminatory *intent*") It is the at-large system as a whole that violates blacks' constitutional rights, not just its component parts. Indeed, the special features of a majority-vote requirement and numbered places provided unnecessary protection for the white majority in Escambia County, where only two black candidates had made the runoffs in countywide elections, neither of whom had been the leading vote-getter in the first primary. J.S. 107a-09a. Thus, merely enjoining the special features in the instant action would provide little or no relief to the black victims of the intentionally dilutive scheme.

Among the "additional features" which can be shown to enhance the majority's voting strength are numbered places, majority runoffs, residency subdistricts, and "full ballot" laws (requiring the voter to cast as many votes as there are seats available for election).[53] Current research demonstrates that these additional features are found primarily in the South and affect in a measurable way the electoral chances of blacks.[54]

Judicial analysis of at-large vote dilution claims, like claims of gerrymandering, raises "special problems."[55] An at-large scheme ought not be thought of as just another potentially gerrymandered districting plan. Rather, it represents a deliberate choice not to draw district boundaries at all; that is, not to apportion seats among geographic areas but to allow the same jurisdiction-wide majority the opportunity to control all the seats.[56] Consequently, objective criteria for detecting invidious gerrymandering in districted election plans are likely not to be helpful in assessing the constitutionality of at-large schemes.[57]

Therefore, the Court should make it clear that where, in cases like the instant one, at-large election structures have systematically excluded the choices of racial minorities and are

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[53]*E.g., see* Derfner, "Racial Discrimination and the Right to Vote", 26 Vand. L. Rev. 523, 553-55 (1973).

[54]Appendix B to this brief contains two tables prepared by Profs. Engstrom and McDonald of the University of New Orleans based on their current, but not yet published, research. Blacks are elected at about 70% of their expected rate in cities that use pure at-large elections but at 22%-32% in cities that have "additional features."

[55]*Karcher v. Daggett*, 103 S.Ct. 2653, 2667 (1983) (J. Stevens, concurring).

[56]*Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) ("The very essence of districting is to produce a different — a more 'politically fair' — result than would be reached with elections at large"); *accord, Baker v. Carr*, 369 U.S. 186, 328 (1962) (J. Frankfurter, dissenting). *See also Rogers v. Lodge, supra*, 102 S.Ct. at 3275; *id.* at 3286 n.16 (J. Stevens, dissenting).

[57]Concepts of compactness, integrity of political boundaries, and fairness in the boundary-drawing process, *Karcher v. Daggett, supra*, 103 S.Ct. at 2672-74 (J. Stevens, concurring), have no relevance in the context of at-large voting. Where no district lines need be drawn, there is no risk that the apportionment result will look like a "crazy quilt," *id.* at 2690 (J. Powell, dissenting), *quoting Reynolds v. Sims, supra*, 377 U.S. at 569.

characterized by features that are designed to strengthen majority control, purposeful racial vote dilution will be presumed, and violation of the fourteenth and fifteenth amendments established, solely from these objective facts.

Justice Stevens' objective test of at-large vote dilution has promise as a more judicially manageable constitutional standard, which accommodates both local government interests in autonomy and the racial minority's interest in fair political access.[58] The theory should not include a requirement that the judicial remedy be restricted to striking down only the special features, leaving at-large voting intact.[59] Unlike *Rogers v. Lodge*, in the instant case, an injunction directly solely at the majority-vote and numbered place requirements would afford no relief for blacks in Escambia County.[60] If the established rule[61] requiring single-member districts in court-ordered remedies were left undisturbed, recognition of Justice Stevens' objective test would present a strong incentive for local governments voluntarily to improve minority access in their election systems rather than to wait for a judicial challenge.

This objective measure of unconstitutional vote dilution affords vulnerable racial and ethnic minorities surer protection against representational unfairness than does a subjective intent standard,[62] and it is more in line with the underlying principles of one person, one vote.[63] Recently, in *Brown v. Thomp-*

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[58]Hartman, *supra* fn. 42, at 724.

[59]*Id.* (Criticizing Justice Stevens' theory as "incomplete" if it includes such a remedial restriction). In fact, in *Rogers*, Justice Stevens thought the question "need not be decided". 102 S.Ct. at 3288 n.22.

[60]See fn. 52, *supra*. Escambia County has only a 20% black population. It contrasts sharply in this regard with Burke County, which had a 53.6% black majority. 102 S.Ct. at 3274. Consequently it is not at all "apparent", as it was for Justice Stevens in *Rogers*, 102 S.Ct. at 3288 n.22, that a well-organized black minority could elect anyone in Escambia County.

[61]*E.g., East Carroll Parish School Bd. v. Marshall*, 424 U.S. 636 (1976).

[62]See *Rogers v. Lodge, supra*, 102 S.Ct. at 3284-93 (J. Stevens, dissenting); *id.* at 3283 (J. Powell, dissenting); *City of Mobile v. Bolden, supra*, 446 U.S. at 121 (J. Marshall, dissenting).

[63]*See generally*, Parker, "The 'Results' Test of Section 2 of the Voting Rights Act: Abandoning the Intent Standard," 69 Va. L. Rev. 715 (1983); Blacksher and Menefee, "From *Reynolds v. Sims* to *City of Mobile v.*

son, 103 S.Ct. 2690 (1983), and *Karcher v. Daggett*, 103 S.Ct. 2653 (1983), the Court undertook a fresh examination of the extent to which states are bound to adhere to strict population equality notwithstanding the need to take account of other, nonpopulation factors affecting fair representation. The instant challenge to an at-large election scheme may present the converse question: To what extent may states rely on inherent population equality to justify failure or refusal to change election structures that are systematically unfair to particular racial groups? A proper resolution of both constitutional issues, however, depends on recognition of the same fundamental principle of equal protection recalled in *Brown v. Thompson* and *Karcher v. Daggett*. *Reynolds v. Sims*, 377 U.S. 533 (1964), did not simply announce a rule of numbers; rather, it acknowledged that other important representational concerns may outweigh even large population disparities[64] and that the ultimate constitutional mandate is "fair and effective representation."[65]

The Court has never suggested that the population equality rule, derived from the Civil War amendments to the Constitution, furthered a constitutional policy more important than the elimination of racial discrimination in the exercise of the franchise. To the contrary, it has identified elimination of state supported racial discrimination as a primary judicial concern because it is "illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society."[66] Further, the Court has acknowledged that the population equality rule does not by itself measure every variety of unconstitutional denial of fair and effective representation.[67] In fact, fairness of group

Bolden: Have the White Suburbs Commandeered the Fifteenth Amendment?" 34 Hastings L. J. 1 (1982).

[64]*Brown v. Thompson*, *supra*, 103 S.Ct. at 2697.

[65]*Karcher v. Daggett*, *supra*, 103 S.Ct. at 2689 (J. Powell, dissenting), *quoting Reynolds v. Sims*, *supra*, 377 U.S. at 565; accord, *Karcher v. Daggett*, *supra*, 103 S.Ct. at 2678 (J. Stevens, concurring); *id.* at 2678 (J. White, dissenting).

[66]*Regents of the University of Cal. v. Bakke*, 438 U.S. 255, 295 n.35 (1978), *quoting* A. Bickel, The Morality of Consent 133 (1975).

[67]*Brown v. Thompson*, *supra*, 103 S.Ct. at 2696; *accord*, *Karcher v. Daggett*, *supra*, 103 S.Ct. at 2671 (J. Stevens, concurring).

participation in the political process may be more important constitutionally than mere numerical equality.[68] Recognition of an Equal Protection violation under this objective standard could restore constitutional priorities in the area of fair representation.

IV. Because The Proper Legislative Authority Rejected A Proposed Constitutional Remedy, The District Court Was Correct To Order Its Own Districting Plan.

Before addressing the complicated, somewhat arcane questions of state and federal law governing the District Court's discretion in providing a remedy for the constitutional violation, a broader view of Appellants' claim should be considered. The question they present is whether the District Court was required to accept a plan advanced by the very same local officials it had found to be guilty of racial discrimination, even though their plan had just been rejected by the county's voters.

The Appellants challenge the 1979 remedial order[69] of the District Court solely on the ground, rejected by both courts

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[68]*Karcher v. Daggett, supra,* 103 S.Ct. at 2671 (J. Stevens, concurring); *accord, id* at 2683 (J. White, dissenting); *id.* 2689 (J. Powell, dissenting).

[69]There is some question whether the remedy issue in this appeal is still meaningful. Since the remedy order was entered in 1979, the District Court has conducted new proceedings as a result of the 1980 census and has considered afresh new plans presented by both the county commission and the Plaintiffs. The remedial election plan now before the Court has been replaced by another plan adopted by the District Court in 1983. The Court has denied petitions to stay implementation of the 1983 plan, and elections have been held under it. The county commissioners' challenge of the 1983 plan is now pending in the Court of Appeals. This Court denied a petition for writ of certiorari that would have bypassed the Court of Appeals. *Escambia County v. McMillan,* 52 U.S.L.W. 3246 (Oct. 4, 1983).

Technically, the remedy issue in this appeal may not be moot, because the District Court's first ground for rejecting the latest 5-2 plans of the county commissioners was law of the case, based on the instant judgment of the Court of Appeals holding that Appellants lack the requisite legislative power under Florida law. *McMillan v. Escambia County,* 559 F.Supp. 720, 725 (1983). But even if the Court were to decide in this appeal that Appellants should have been accorded legislative deference in 1979, the ruling would not necessarily answer the question whether the commis-

below, that the County Commission had the power under state law to restructure the method by which it is elected and to increase the number of commissioners. Appellants' Brief at 42. The District Court found, and the Court of Appeals agreed, that, because Escambia County's electorate had refused to adopt the home rule option offered by Florida law, the incumbent commissioners were bound by explicit state constitutional provisions governing the method of electing noncharter county commissions and lacked the legislative authority to adopt any other method of election. J.S. 68a.

A. *The Escambia County Commission Lacks the Power to Change Its Method of Election.*

The Florida Constitution sets a general policy of at-large elections for county commissions, but allows counties which adopt home rule charters to vary the method of election.[70]

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sioners' 1983 plans also should have been accorded legislative deference. Issues about the 1983 election proposals still would require fresh assessment by the lower courts. For example, it is not certain, even if the county commissioners' 1979 5-2 plan was entitled to deference, that they could still exercise the same *Wise v. Lipscomb* extraordinary legislative powers four years later. The intervening period has afforded ample time for new home rule charter proposals, legislative initiatives and even amendment of the state constitutional provision that restricts noncharter counties to five-member commissions elected at-large. No such clear legislative responses have been forthcoming, and even *Wise v. Lipscomb* suggests a time limit on the local government's emergency powers. See p. 41 *infra*.

Moreover, even if the commissioners' plans are entitled to legislative deference, the District Court has made alternative rulings that the Appellants' 1983 plans would not meet constitutional and Voting Rights standards. The commissioners "have not on the record carried the burden on them of showing that they do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . ." 559 F.Supp. at 726. This is a burden of Appellants must continue to bear with each new election proposal, a burden imposed both by Section 3 of the Voting Rights Act, 42 U.S.C. § 1973a, J.S. 61a, and, because they have been adjudicated guilty of purposeful racial discrimination, by the Constitution. *Sims v. Amos*, 365 F.Supp. 215, 220 n.2 (M.D. Ala. 1973) (3-judge court), *aff'd sub nom., Wallace v. Sims*, 415 U.S. 902 (1974).

[70]Fla. Const., Art VIII, § 1(e) (1968), provides "Except when otherwise provided by county charter, the governing body of each county shall

Twice within the last six years, the citizens of Escambia County have rejected referendum proposals to adopt a home rule charter. J.S. 54a, 96a. The Constitution of Florida strictly prohibits any form of election for non-home rule counties other than the at-large system. Fla. Const. Art. VIII, §1 (e). Consequently, unlike the City Council of Dallas,[71] the Escambia County Commission may not adopt another election structure.

The Attorney General of Florida agrees. In a letter dated July 19, 1983, to the Speaker of the Florida House of Representatives, the Attorney General pointed to the problem that arises when noncharter counties are successfully sued for utilizing an at-large system that dilutes blacks' voting strength. (The full text of this letter is attached to this brief as Appendix C.)

> Article VIII, §1 (e) Fla. Const. and §124.01 Fla. Stat. provide for the at-large election of county commissioners except when otherwise provided by county charter. Thus, unless a charter provides otherwise, a county is without authority under state law to enact a single-member system or other alternatives to a purely at-large election system for county commissioners.

Both the district court and the Court of Appeals interpreted the Florida Constitution in the same way. J.S. 24-26a, 68a. The long established rule in this Court is that it will not disturb the interpretation of state law concurred in by a local federal district judge, who has practiced law for many years in the state, and by the federal court of appeals for that state. *Bishop v. Wood*, 426 U.S. 341, 345-46 and n.10 (1976), *citing United States v. Durham Lumber Co.*, 363 U.S. 522 (1960); *Propper v. Clark*, 337 U.S. 472, 486-87 (1949). *Accord, e.g., MacGregor v. State Mutual Life Assurance Co.*, 315 U.S. 280 (1942).

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be a board of county commissioners composed of five members serving staggered terms of four years. After each decennial census the Board of County Commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected by the electors of the county."

[71] *Wise v. Lipscomb*, 437 U.S. 535, 544 and n.8 (1978).

B. *The Courts Below Properly Applied Wise v. Lipscomb.*

Wise v. Lipscomb, 437 U.S. 535 (1978), holds that an election plan adopted by a local government body should be treated as a legislative plan by a federal court only if state law provides that body with the power, express or implied, to change its election structure. *Id.* at 542-46. The critical feature of *Wise* was that the City of Dallas government exercised home rule powers. *Id.* at 544 and n.8. Consequently, since there was insufficient time to complete the charter amendment process, which culminated in a referendum election, *id.* at 539 and n.3, the federal court could presume that the residual legislative power to act in such an emergency had been delegated by the state to the city, making the city council's plan one that was entitled to legislative deference. *Id.* at 544. By contrast, in the instant case, Escambia County's citizens had decided against giving the county commission home rule powers, so the district court properly concluded that the residual legislative power to change the method of election remained with the state government. The adoption of a new election plan by the county commission did not relieve the court of its duty to order its own remedial plan.

If Appellants' contention were upheld, it would emasculate the legislative authority requirement insisted on by a majority of the Court in *Wise v. Lipscomb*. It would mean that federal courts would have given the Escambia County Commission a legislative power that the Florida Constitution carefully has withheld from the local government, except where the county chooses to adopt a home rule charter. To avoid unnecessary and unseemly interference with states' prerogatives, federal courts must refer to state law to determine who has the authority to adopt new election structures. This case is a perfect example of the mischief that otherwise would be likely. Here incumbent county commissioners are asserting that, by a stroke of the pen, a federal district court has invested them with the very same legislative power that the people of Escambia County have on two recent occasions denied them. Indeed, the 5-2 elec-

tion scheme, which the Appellants claim now to have the force of law, was the one contained in the latest charter proposal rejected by the voters. J.S. 67a.

In effect, the Appellants by their contention are asking this Court to choose between competing claimants for lawmaking authority: the citizens of Escambia County, who are designated by the state constitution, and the incumbent commissioners, who claim that they have been empowered by the district court's judgment to ignore the state constitution. Other possible competing claims for "deference preference" that could be occasioned if Appellants' contentions were accepted include: different plans adopted by each house of a state legislature but rejected by the other; one plan adopted by the state legislature and another adopted by the local government; one plan adopted by the local government body and another adopted by the county's legislative delegation; a plan adopted by the legislature in one form, amended by the governor (using executive amendment power), and then rejected by the legislature in that form.

It must be remembered that a court-ordered election plan is by definition a temporary one, to remain in effect only until the proper authorities can enact a constitutionally adequate plan under state law.[72] The Court was willing to overlook Dallas' failure to comply with the full charter revision process in *Wise* only because of the shortness of time. 437 U.S. at 544 n.8. After pending elections had been held under the remedial plan, the voters of Dallas ratified the proposed change in the city's charter. 437 U.S. at 539 n.3. Had they voted it down, it would have been necessary for the district court to adopt its own temporary plan. In the instant case, however, there was sufficient time before the next elections for a properly drawn charter proposal to be presented to the Escambia County electorate, and it was rejected. In these circumstances, the district court correctly entered a court-ordered election plan. This judicial course is least likely to interfere with Florida's constitu-

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[72]*Reynolds v. Sims, supra*, 377 U.S. at 586-87; *accord, Wise v. Lipscomb, supra*, 437 U.S. at 540.

tionally crafted procedure for determining the election structures for its county commissions. The court-ordered plan will remain in force only until Escambia County's voters accept a legally and constitutionally adequate charter proposal, or until the state constitutional provisions governing the method of electing noncharter county commissions are themselves amended. Only a few weeks ago, the Attorney General of Florida asked the state legislature to consider whether changes should be made in the constitutional procedure. See Appendix C to this brief.

C. *McDaniel v. Sanchez has not overruled Wise v. Lipscomb.*

The Appellants also argue that *McDaniel v. Sanchez*, 452 U.S. 130 (1981), compels the decision that the courts below erred in their interpretation of *Wise*, because it had been modified by *McDaniel*. Brief of Appellants at 44.[73] The Appellants' argument is based entirely on one statement in *McDaniel*.[74] *McDaniel*, however, is clearly an interpretation of §5 of the Voting Rights Act, 42 U.S.C. §1973c, and not the "legislative deference" issue regarding state legislative authority to change methods of election. Indeed, the Court noted that all "parties appear to agree that the Commissioners Court had authority under Texas law to redraw the boundaries of the commissioners' precincts," 452 U.S. at 152 n.34.

Although the question of "legislative deference" and the question of §5 preclearance will often arise in the same case, *Wise* and *McDaniel* do not hold that they are analyzed the same way. Clearly, because entirely different policies are at stake, they should not be analyzed the same way. On the one hand, the policy underlying deference to state legislative authority when formulating a constitutionally adequate remedy

[73]The appellants did not suggest this theory for reversal while the appeal was pending in the Court of Appeals, nor did they mention it in their Jurisdictional Statement.

[74]"[T]he essential characteristic of a legislative plan is the exercise of legislative judgment. The fact that particular requirements of state law may not be satisfied before a plan is proposed to a federal court does not alter this essential characteristic." 452 U.S. at 152.

is the avoidance of unnecessary interference with the state's legitimate legislative processes. On the other hand, the preclearance policy of the Voting Rights Act seeks to assure strict federal scrutiny of all changes affecting voting initiated by the state or its political subdivisions.

CONCLUSION

The appeal should be dismissed for lack of jurisdiction. If the Court determines to review the merits of the appeal, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX A

events, including the Democratic Party's establishment of the white primary in 1900, suggest racial motivation. There was no procedural departure, but a substantive inconsistency was soon apparent. Beginning in 1907, commissioners ran in single-member districts in the white primary, which was tantamount to election. Thus, though the constitution mandated at-large elections, the effect of the state policy was to ensure that commissioners were elected from single-member districts. The ultimate effect of all this was a system in which whites were elected in single-member districts and blacks were forced to challenge them in at-large elections. No blacks were elected under this scheme.

Although these factors indicate racial motives, in affirming another voting dilution case from the Northern District of Florida, the Fifth Circuit was able to reach the conclusion that there was no racial motivation behind the 1901 amendment because blacks were effectively disenfranchised at that time. *McGill v. Gadsden County Commission*, 535 F.2d 277, 280-81 (5th Cir. 1976). Dr. Shofner, plaintiffs' expert historian, testified that there was general disenfranchisement due to the poll tax and that blacks were no political threat at the time. Though he did not specifically mention the 1901 amendment, he did testify that another at-large requirement passed in 1895 for the school board was not racially motivated due to this disenfranchisement. The evidence did show, however, that there were always some blacks registered to vote in Florida. Furthermore, Dr. McGovern, plaintiffs' other historian,

APPENDIX B

Research of Profs. Engstrom and McDonald

Table 1
Combined Categorizations of At-Large Types
(central cities of SMSAs)

	ALL	SOUTH[1]		NONSOUTH	
		N	(%)	N	(%)
Free for all	81[2]	15	(25)	66	(75)
Residency sub-districts, majority	20[3]	16	(26)	4	(5)
Residency sub-districts, plurality	9[4]	5	(8)	4	(5)
Numbered places, majority	32	20	(33)	12	(14)
Numbered places, plurality	4	2	(3)	2	(2)
No Place, full slate[5]	3[6]	3	(5)	0	(0)
TOTAL (at large systems)	149	61	(100)	88	(100)
TOTAL (all central cities)	317	103		214	

1. Former Confederate States.

2. Contains one majority black city, Detroit. Also, 21 of the cities actually have separately elected mayors who sit on the council.

3. Contains 5 cities with separately elected mayor who sits on council. Also has 3 cities which have sub-district residency requirement for only some of the members.

4. Contains one majority black city, Augusta. Also one city has subdistrict residency requirement for some council members; Augusta has majority requirement for mayor.

5. Each voter must cast as many votes as there are seats available in the election.

6. Contains one majority black city, Birmingham, which elects council in two groups with staggered terms. The other two (Jackson and Pascagoula, MS) have full slate rule for council members but separately elected mayor sits on the council.

Table 2

Regression Equations, by system type[1]

Type	black % of council =	N
all districts	−.641 + .955 (black pop. %)	50
pure at-large	−1.74 + .697 (black pop. %)	59
pure at-large (designated mayor on council)	+4.86 + .217 (black pop. %)	21
at-large, residency, majority	+2.91 + .325 (black pop. %)	20
at-large, place system, majority vote	+5.65 + .227 (black pop. %)	32

[1]Majority black cities are excluded.

APPENDIX C

Letter of Attorney General

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32301

JIM SMITH
Attorney General
State of Florida

July 19, 1983

Honorable Lee Moffitt
Speaker, House of Representatives
Room 420, The Capitol
Tallahassee, Florida 32301

Dear Mr. Speaker:

It has come to my attention that a number of recent lawsuits have been filed against counties concerning at-large elections for county commissioners and school boards members. I am also informed that possibly as many as 30 additional suits may be brought against county school boards.

These suits address alleged vote dilution resulting from at-large elections. I am concerned about these cases because of the implications of the decisions in NAACP v. Gadsden County School Board, 691 F.2d 978 (11th Cir. 1982) and McMillan v. Escambia County, 638 F.2d 1239 (5th Cir. 1981).

In NAACP v. Gadsden County, supra, the Eleventh Circuit, citing Supreme Court authority, stated:

> Accordingly, to prevail in a vote dilution case under the equal protection clause of the fourteenth amendment, a plaintiff must demonstrate (1) the existence of a discriminatory purpose in either the enactment or operation of the election scheme; and (2) differential impact, i.e., dilution of the minority's voting power.

The court found that § 230.08 and § 230.10, Fla. Stat., were enacted with a discriminary purpose. Having satisfied the first prong of the vote dilution test, the court then held that the legislation has had the effect of diluting minority votes in Gadsden County, thus satisfying the second prong of the vote dilution test. Based on the facts present there, § 230.08 and § 230.10, Fla. Stat., were found unconstitutional as they apply to Gadsden County.

My first concern in view of the NAACP v. Gadsden decision is that while the factual findings regarding the discriminatory purpose behind § 230.08 and § 230.10, Fla. Stat., may be limited to Gadsden County and not be binding in future litigation, they appear to be supported by the history behind the legislation and consequently could be persuasive in future litigation. If such were the case, it would then only remain for a plaintiff to prove a differential impact (dilution) in order to prevail in a vote dilution case.

In sum, the implication of NAACP v. Gadsden could well be that in order for a plaintiff to prevail in a vote dilution case challenging the at-large election of county school board members, the plaintiff would merely have to prove dilution. This is generally proven by evidence that a substantial minority is consistently unable to elect candidates of its choice.

Assuming arguendo that a plaintiff could establish such dilution in any of these lawsuits, a dilemma becomes apparent for such counties. Sections 230.08 and 230.10, Fla. Stat., mandate that the "election of members of the school board shall be by vote of the qualified electors of the entire district." Consequently, counties, which may realize that the at-large system has diluted a minority's voting power are without authority under state law to enact a single-member system or other alternative to a purely at-large system. Such counties' hands are tied should they wish to unilaterally remedy the situation.

A similar dilemma arises in the election of county commissioners. Article VIII § 1(e) Fla. Const. and § 124.01 Fla.

Stat. provide for the at-large election of county commissioners except when otherwise provided by county charter. Thus, unless a county charter provides otherwise, a county is without authority under state law to enact a single-member system or other alternative to a purely at-large election system for county commissioners.

In order to examine means for alleviating the counties' potential dilemma, I recommend that the legislature consider this subject as an interim study project. The study project should consider amending § 230.08, § 230.10, § 124.02 Fla. Stat. and Article VIII § 1(e), Fla. Const., to allow all counties the option to utilize single-member districts for the election of school board members and county commissioners. Single-member districts at the statewide level have proven responsive to the voters' needs and are, in my opinion, appropriate to consider for the local level at least on an optional basis. Such study project should also consider the applicability and impact of the 1982 Congressional Amendments to § 2 of the Voting Rights Act of 1965, 42 USC § 1973 (Pub. L. No. 97-205, § 3, 97th Cong., 2d Sess., 1982) to vote dilution cases.

The courts have been implementing single-member redistricting plans and imposing significant attorneys' fees awards in vote dilution cases where minority plaintiffs have prevailed. Therefore, I urge your thorough consideration of this matter. I and my staff will be happy to assist the legislature in any way you desire.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

/s/ JIM SMITH

Attorney General

JS: vb

cc: Honorable Bob Graham, Governor
State of Florida
Honorable Curtis Peterson, President
Senate
Mr. Donald Magruder, Executive
Director, Florida School
Board Association
Mr. John Thomas, Executive
Director, State Association of
County Commissioners of
Florida

Office - Supreme Court, U.S.
FILED
JAN 6 1984
ALEXANDER L. STEVAS,
CLERK

NO. 82-1295

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1983

ESCAMBIA COUNTY, FLORIDA, ET AL.,
Appellants,

v.

HENRY T. MCMILLAN, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF OF APPELLEES

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SUMMARY OF INTERVENING EVENTS

Since the Brief of Appellees was filed, the following events affecting this case have occurred:

1. In primary and general elections conducted in September and November 1983 a new Escambia County Commission was elected from single-member districts. Four of the five incumbent commissioners who had voted to prosecute this appeal were defeated; only Kenneth Kelson was reelected. The issue of whether this appeal should be maintained or dismissed was prominently featured in the campaigns of the defeated incumbents.[1] Their claims about the importance of continuing this appeal did not result in their reelection.

[1]For example, ex-Commissioner Woolard ran a television advertisement showing him standing in front of the federal courthouse and proclaiming

2. The new county commissioners took office on November 15, 1983, and on December 1 they voted 3 to 2 to dismiss this appeal. Accordingly, a motion to dismiss this appeal was filed on or about December 5, 1983, on behalf of Escambia County and its Board of County Commissioners. The motion to dismiss and the accompanying motion to substitute new county commissioners as appellants were signed by Thomas R. Santurri, Escambia County Attorney.

3. By letter dated December 6, 1983, Charles S. Rhyne, the Washington attorney who has represented Escambia County and its Board of County Commissioners throughout the trial and appeals of this case, informed this Court that he would appear at the oral argument of this action in behalf of four former commissioners, John E. Frenkel, Billy Tennant, Gerald Woolard and Marvin Beck, and the two present commissioners who voted against dismissing this appeal, Kenneth Kelson and Max Dickson. By letter dated December 13, 1983, Mr. Rhyne further notified this Court that his name was incorrectly and "unintentionally" listed on the motion to dismiss the appeal that had been filed by Escambia County. In this state of affairs, it is unclear to Appellees what lawyers will appear for Escambia County. Mr. Rhyne has filed a Reply Brief for the individuals mentioned above.[2]

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his determination to continue the appeal of the District Court's orders. See the news article reproduced from the September 14, 1983, edition of the *Pensacola Journal*, which is reproduced as Appendix A to the supplemental brief. Woolard was defeated.

[2]Charles Rhyne has been co-counsel with the Escambia County Attorney since the beginning of this litigation. To the best of our knowledge, all of his fees have been paid from the public treasury of Escambia County. Appellees understand Mr. Rhyne has associated as his local counsel Ms. Paula Drummond, who formerly was a staff attorney for Escambia County, Florida.

4. On January 5, 1984, the Escambia County Commission formally adopted an election plan which in relevant respects is identical to the court-ordered plan that the Court has been asked to review in this appeal. This action effectively moots the remedy issue.

ARGUMENT

I. The Adoption by the Escambia County Commission of the Election Plan Approved By the District Court Renders Moot the Remedy Issues in This Case.

The Brief of Appellees, pp. 37-43, takes issue with the contention in the Brief of Appellants, pp. 42-49, that either the Florida Constitution or previous decisions of this Court empower the noncharter Escambia County Commission to enact a legislative remedial election plan in response to the District Court's judgment striking down the at-large election system. However, even if the theory of the original Appellants were correct, according to that theory the action taken by the Escambia County Commission on January 5, 1984, adopting a 5-0 single-member district election plan would supersede the 5-2 plan adopted by the Commission in 1983. Accordingly, no

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Canon Five of the American Bar Association Code of Professional Responsibility provides that "a lawyer should exercise independent professional judgment on behalf of the client." Ethical Consideration 5-18 provides:

> A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization.

Canon Four of the American Bar Association Code of Professional Responsibility provides that "a lawyer should preserve the confidences and secrets of a client". ABA Formal Opinion No. 165 (Aug. 23, 1936) provides that "an attorney must not accept professional employment against a client or former client which will, or even *may* require him to use confidential information obtained by the attorney in the course of his professional relations with such client regarding a subject matter of the employment . . . ." *See also* Ethical Consideration 4-5.

matter which view of the law is correct, the remedy issue presented in this appeal is moot. The original Appellants contended that federal courts must defer to the desires of the county commission regarding the form of the election plan. Now the Escambia County Commission's plan is the same as the District Court's plan. The only election plan that can claim legitimacy is the one by which elections were held in 1983.

II. Neither the Former Commissioners Nor the Two Present Commissioners Who Voted Against Dismissal Are Parties Who May Maintain this Appeal.

None of the six persons named in Charles Rhyne's letter of December 6, 1983, as those he represents is a party in either his official or individual capacity, who may maintain this appeal and thwart the will of the people of Escambia County who, through their recently elected County Commission, have sought to have the appeal dismissed.

A. *The Four Former Commissioners Are Not Appellants.*

Frenkel, Tenant, Woolard and Beck are no longer in office. Under the District Court's standing pretrial order, they are no longer parties to this action in either their official or individual capacities.

The Complaint listed as defendants Escambia County Florida, Charles Dease, Kenneth Kelson, Zearl Lancaster, Jack Kenney, Marvin Beck, individually and in their official capacities as members of the Board of County Commissioners of Escambia County. J.A. 45. The defendants' answer sought dismissal of the individual defendants:

> The Complaint fails to state a cause of action against said Defendants in their respective individual capacities because of its failure to allege any acts by said Defendants in their individual capacities and because of its failure to pray for any relief from said Defendants in their individual capacities as opposed to any relief from said Defendants in their respective representative capacities.

J.A. 55.

The district judge in his order of May 18, 1977, directed the parties to submit memoranda concerning "[w]hether these actions should proceed against the members of the County Commission . . . in their individual capacities." J.A. 59. The Defendants' memorandum filed May 27, 1977, Docket No. 46, argued that (1) the Complaint did not contain any allegations against the Defendants in their individual capacities, (2) complete relief could be granted by injunction against the Defendants in their official capacities, and (3) the individual Defendants had "no responsibilities for the acts complained of by the plaintiffs and are incapable of granting relief to plaintiffs under mandatory injunctions." The district judge informed counsel by letter of August 4, 1977:

> Insofar as the action's proceeding against the individual defendants in their individual capacities, relief sought, if granted, must, of course, be given against them in their representative capacities. Nonetheless, because of possible problems of enforcement which would run against them personally if such were to be required, it seems to me it may be that they should be retained in their individual capacities.
>
> In any event, I do not see how much harm can be done by retaining them in their individual capacities, and I have no motion before me on which I can take action.

J.A. 62. The issue was raised again at the pretrial conference, and the pretrial order of May 12, 1978, provides as follows:

> 9. At pre-trial conference the question of dismissal of the parties defendant in their individual capacities was presented to the court on motion. It was made clear at the pre-trial conference that plaintiffs do not seek under the complaint filed in this case and will not seek any judgment for attorney's fees or court costs against these parties in their individual capacities and the court agrees that in the pleadings presented to the court there would be no basis for any such relief against them individually.
>
> The court does conclude that they should be left in for purposes of injunctive relief and for purposes of enforcement of any injunctive decree entered, if such is entered. For that reason such motion is denied.

> 10. Prior to trial, in the light of possible changes in defendants before the court in the representative capacities the parties will jointly agree on what changes have been made and under the rules come before this court and substitute those who now should be here in such representative capacities.
>
> Inasmuch as these defendants are left in individually the substitution will take out of this case both individually and in their representative capacity those who are no longer in office and will substitute those now in office in their place individually and in such representative capacity.

J.A. 78-79.

Three of the original Defendant Commissioners left office during the litigation and were replaced by gubernatorial appointments. The Defendants themselves filed motions to have Frenkel substituted as a party defendant "in his official capacity" for Kenney on December 5, 1978; to substitute Woolard for Dease as a party defendant "in his official capacity" on November 29, 1979; and to substitute Tennant for Lancaster as a defendant on or about December 29, 1982. By the time the decision was made to appeal to this Court, only two of the five commissioners had ever been elected, and all five commissioners, whether elected or appointed, had served beyond their terms of office.

The notice of appeal to this Court was filed on behalf of "Escambia County, Florida, [and] the members of the Board of County Commissioners." J.S. 120a.

It is clear from the state of the pleadings that Frenkel, Tennant, Woolard and Beck appealed to this Court as "members of the Board of County Commissioners." They are no longer in office as members of the Board of County Commissioners. Under the outstanding pretrial order, when they left office they were automatically dismissed in both their official and individual capacities when notice of substitution for them was filed in this Court. Under no circumstances can they still be considered as appellants before this Court.

B. *The Two Present Commissioners Who Dissented From the Decision to Dismiss May Not By Themselves Maintain This Appeal.*

The two present dissenting commissioners, Kelson and Dickson, do not have sufficient individual status in the case to maintain an appeal in their individual capacities. The District Court's pretrial order leaves them in the action as individuals only for the purpose of insuring enforcement of its decrees; they are not subject to any claims for damages or other relief against them individually, such as attorneys' fees or court costs. J.A. 78-79. Since there can be no enforcement problem as long as the majority of the members of the Escambia County Commission comply with the outstanding court orders, there is not any individual status that would support an appeal by Kelson and Dickson.

Under Florida law, individual members of commissions or boards may not prosecute actions or appeals, either in their individual or official capacities.

The Supreme Court of Florida has held that duties or responsibilities that are carried out in the name of "the Board of County Commissioners" or "the County Commissioners" are properly carried out by a majority of the county commissioners acting at a lawful meeting. *Scott v. State*, 143 So. 249 (Fla. 1932); *accord*, Fla. Atty. Gen. Op., Sept. 8, 1947, No. 047-287, and June 17, 1975, No. 075-178. Individual members of the Board of County Commissioners have no power to act with binding effect on the county government. *See Kirkland v. State*, 86 Fla. 64, 97 So. 502 (1923).

With respect to the maintenance of litigation, the Florida Legislature has provided:

> The legislative and governing body of a county shall have the power to . . . [p]rovide for the prosecution and defense of legal causes in behalf of the county or state and retain counsel and set their compensation. . . .

Fla. Laws § 125.01 (1) (b).

In *Department of Education v. Lewis*, 416 So.2d 455 (Fla. 1982), the State Commissioner of Education, a trustee of a community college, and the State Department of Education sued the comptroller and secretary of state, alleging the unconstitutionality of a provision in an appropriations bill which denied funds to any educational institution which in any way supports "sexual relations between persons not married to each other." The Florida Supreme Court held that all three plaintiffs lacked standing in their official capacities to challenge the appropriation act. 416 So.2d at 458. The court noted that only the comptroller, and in some cases, the Florida Attorney General could initiate litigation to challenge the constitutionality of legislation. 416 So.2d at 459. Similarly strict standing rules were applied in *Williams v. Howard*, 329 So.2d 277 (Fla. 1976), wherein two members of the Florida Parole and Probation Commission challenged legislation which transferred the powers and duties of that Commission to another agency. The court held that two Commission members "in their capacity as a minority of the Parole and Probation Commission lacked standing to maintain a suit." 329 So.2d at 279.

The lack of authority for a county commissioner to sue in behalf of the county corresponds to a statute regulating suits against counties. *Alianell v. Fossey*, 114 So.2d 372 (Fla. 3rd DCA 1959), held that Chapter 125.15 of the Florida Laws prohibits a suit against commissioners in their individual capacities. There does not appear to be any statute or court precedent in Florida giving a commissioner who is in the dissenting minority standing to continue litigation as an individual or as an official.

Similar results have been reached in other states. In *Elterich v. Arndt*, 27 P.2d 1102 (Wash. 1933), five taxpayers sued the county, the members of the county commission and others, and obtained an injunction against all of the commissioners, restraining them from "letting any contract for the construction of any bridge." 27 P.2d at 1102. One member of the Commission (Arndt) appealed as a member of the Commission and as an individual, "feeling himself aggrieved." *Id.* The appeal

was dismissed, because as an individual the appellant did not have a substantial interest in the subject matter of the litigation nor was he aggrieved or prejudiced by the restraining order. "Appeals are not allowed for the purpose of settling abstract questions, however interesting or important to the public generally, but only to correct errors injuriously affecting the appellant." *Id.* Furthermore, the court held that Arndt, as a member of the Board of County Commissioners, could not maintain the appeal. "The appeal, not having been taken or authorized by the Board in its official capacity, but by only one member thereof, is a nullity." 27 P.2d at 1103. *See* also *Terrill v. City of Tacoma,* 80 P.2d 858, 859 (Wash. 1938); *State ex rel. Simeon v. Superior Court for King Co.,* 145 P.2d 1017, 1019 (Wash. 1944).

A similar ruling was made in *State ex rel. Erb v. Sweaas,* 107 N.W. 404 (Minn. 1906). A mandamus action was brought against the county government and each of the commissioners. After an adverse judgment, two of the commissioners attempted to appeal. The appeal was dismissed.

> The action was commenced against the Board of County Commissioners in their corporate or official capacity, and, though the individual members were named as respondents, all steps in reference to the proceeding, either in defending it or appealing from a judgment therein, could be taken only by the official action of the Board. If the action involved the rights of the individual members, the position of the appellants would be tenable; but as it does not, but only the Board as an official body, the attempted appeal by two members on behalf of their associates was wholly ineffectual.

107 N.W. at 405. *See also Huber v. Hennepin County Welfare Board,* 83 N.W.2d 511, 515 (Minn. 1957); *Hart v. Bye,* 86 N.W.2d 635, 638 (N.D. 1957); *Ray v. Trapp,* 609 S.W.2d 508, 510 (Tenn. 1980); *In re Appointment of Special State's Attorneys, Rudman v. Grabavoy,* 356 N.E.2d 195 (Ill. App. 1976); *Buchele v. Woods,* 528 S.W.2d 95 (Tex. Civ. App. 1975).

Under federal precedent, as well, Commissioners Kelson and Dickson may not continue to prosecute this appeal as individ-

uals. In *Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969), the District of Columbia School Board voted not to appeal a school desegregation order, but an appeal was filed by Smuck, a member of the Board of Education. The Court of Appeals ruled that he could not maintain the appeal.

> While he was in that capacity a named defendant, the Board of Education was undeniably the principal figure and could have been sued alone as a collective entity. Appellant Smuck had a fair opportunity to participate in its defense, and in the decision not to appeal. Having done so he has no separate interest as an individual in the litigation. The order directs the Board to take certain actions. But since its decisions are made by a vote as a collective whole, there is no apparent way in which Smuck as an individual could violate the decree and thereby become subject to enforcement proceedings.

408 F.2d at 178.

CONCLUSION

Recent events provide reasons in addition to those set out in the Brief of Appellees why this appeal should be dismissed. The remedy issue is moot, and there are no appellants with standing to maintain this appeal.

Respectfully submitted,

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APPENDIX

Coast

The Pensacola Journal
Wednesday, September 14, 1983

Death Notices, 4C
Classified, 4-8C

C

First election since 1978

Voters decide time for change

By CRAIG PITTMAN
Journal Staff Writer

They've all been in office a lot longer than anyone expected.

But three of the five incumbents in Tuesday's race for the Escambia County Commission are out of a job now, and the fourth is in jeopardy.

Commissioners Marvin Beck, Gerald Woolard and Billy Tennant went down to defeat Tuesday in the Democratic primary.

Commissioner John Frenkel Jr., who came in second in the District 4 race, is in a runoff with a political newcomer and may even find himself bumped out of that race by challenger Muriel Wagner, depending on the results of today's absentee vote count.

Only District 2 Commissioner Kenneth Kelson won re-election to his post in Tuesday's primary, the first time Escambia voters had a chance to pull a lever in a commission race since 1978.

And that may have been the problem, say the incumbents.

The five men in office have battled a voting rights case through the federal court system all the way to the top, the U.S. Supreme Court. They have spent thousands of dollars to do so, contending all the while they are only continuing the fight because they are sworn to defend the state Constitution.

But in the meantime, elections that should have been held in 1980 and 1982 were put off. Two commissioners who resigned were replaced by men appointed by the governor, not elected by the voters, and the terms of all five have run out.

The expense and the delay have probably turned many voters against the incumbents.

What the five have been fighting is the district system of elections, an abstract concept that the voters may not have understood completely until they went to vote Tuesday.

In previous elections, the state Constitution said that every voter in Escambia County got to vote on all five commissioners. But because of the voting rights case, the voters now can only pick one commissioner, and that one only from the candidates running in their district.

"This issue the incumbents have been trying to push — 'I want to vote for everybody' — is more important than anyone has realized," Frenkel said Tuesday night

See INCUMBENTS, Page 4C

Incumbents

Frenkel said he got complaint after complaint from Frenkel-backers who wanted to vote for him but couldn't because they didn't live in District 4.

Commission Chairman Gerald Woolard, who was in Orlando Tuesday for the State Association of County Commissioners' meeting, agreed with Frenkel on the importance of the voting issue in the campaign.

"I think all along I've felt some dissatisfaction (among the voters)" Woolard said. "A lot of it is tied up to the lack of elections."

During the campaign, Woolard made a strong television commercial that showed him standing on the steps of the federal courthouse and proclaiming his determination to defend the people of Escambia County from the dictatorial decisions of a single federal judge.

Apparently that did not impress enough of the voters. The former Navy officer spent more money than any of the other nine candidates in the District 1 race, but placed third in the field.

The voters in District 5 were even less impressed with their incumbent, Marvin Beck, and his defense of the commission's continued appeals. He placed fifth in a field of six candidates.

Beck said it is tough to run a campaign "when you're trying to defend the constitution when peole don't understand it."

Beck, a former basketball coach and teacher, added that he does not envy the man who takes his place in representing far-flung, largely rural District 5.

One incumbent, Commissioner Billy Tennant, lost to Kelson in the District 2 race.

Tennant had been in District 3, but court-ordered redistricting tossed him into the race with Kelson.

Tennant, like Woolard, was appointed to the commissioner's post and thus was facing the voters for the first time. And he was up against a fellow incumbent who ran unopposed in the 1978 elections. Tennant outspent Kelson, but failed to outpoll him. He said he has no idea what happened.

Kelson has been the maverick among the incumbents, however. He often wound up on the losing end of 4-1 votes, earning him the nicknames of "Dr. No" and "the Abominable No-man." In a way, he was an incumbent who was not one of the incumbents.

On the other hand, two of the men who helped unseat the three commissioners are about as close to being incumbents as you can get without actually holding the title, county Supervisor of Elections Joe Oldmixon said Tuesday.

Oldmixon pointed to former county Sheriff Bill Davis, who was the frontrunner in the District 1 race, and former Commissioner Grady Albritton, the frontrunner in the District 5 race.

"Bill Davis is like an incumbent because he has run so many times," Oldmixon said. "And Grady Albritton is the same way."

However, both those men must beat political newcomers in the Oct. 4 runoff election to become part of the new incumbents.

Supreme Court, U.S.
FILED
JAN 3 1984
ALEXANDER L. STEVAS
CLERK

No. 82-1295

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF APPELLANTS KENNETH J. KELSON, MAX L. DICKSON, JOHN E. FRENKEL, JR., BILLY G. TENNANT, GERALD WOOLARD AND MARVIN BECK

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THE CASILLAS PRESS, INC. · 1717 K STREET NW WASHINGTON DC — 223-1220

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Appellants Kenneth J. Kelson ("Kelson"), Max L. Dickson ("Dickson"), John E. Frenkel, Jr. ("Frenkel"), Billy G. Tennant ("Tennant"), Gerald Woolard ("Woolard") and Marvin Beck ("Beck"), through counsel, submit this reply to the Brief of Appellees.[1]

ARGUMENT[2]

I. Appellees Have Conceded that the Suit Should Have Been Brought Against the State, State Officials and/or State Entities.

Appellees have conceded that they should have brought this suit against the State of Florida, the Governor, and/or the Flo-

[1]The reasons why this brief is filed on behalf of these persons are set forth in the December 6, 1983 letter from counsel to the Clerk of the Court.

[2]Citations to material which appear in: the Jurisdictional Statement are to "J.S.;" and the Joint Appendix are to "J.A.".

rida Legislature and the members thereof, etc. Rather than attempting to refute appellants' position that the suit should have been brought against those responsible for the at-large election system in issue, appellees seek to divert attention from their fatal concession by now claiming[3] that this Court lacks jurisdiction of the appeal because "the Court of Appeals has not held any state statute to be invalid in the instant case."[4] Appellees base this claim on the misleading and unsupported contention that Fla. Const. art. VIII §1(e) "has not been invalidated" for elections to the Escambia County, Florida ("Escambia") Board of County Commissioners ("County Commission").[5] While recognizing that the district court invalidated Fla. Const. art. VIII, §1(e),[6] appellees contend that the Fifth Circuit merely "held that relevant local officials of Escambia County, for invidious racial reasons, have chosen not to exercise the option afforded by the home rule provisions of the state constitution to change to single-member districts."[7] This contention strains credulity beyond recognition.

A. The Fifth Circuit Invalidated Florida's Constitutional Requirement for the At-Large Election of Escambia's County Commissioners.

Even if appellees' characterization of the Fifth Circuit's holding in *McMillan v. Escambia County, Florida ("McMillan III")*[8] were accurate, which it is not, it ignores the relief granted. The court did not direct the County Commission "to exercise the option afforded by the home rule provisions of the state constitution . . . ." If that were the object of the suit, it could have been brought in the state courts under Florida law. The Fifth Circuit, instead, affirmed, inter alia, the portion of the district court's decision declaring that Florida's constitutional

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[3]Appellees' Motion To Affirm or Dismiss, of course, was the proper place for appellees to have made their jurisdictional argument.

[4]Brief of Appellees at 8.

[5]*Id.*

[6]*Id.* at 4.

[7]*Id.* at 8.

[8]688 F.2d 960 (5th Cir. 1982). (J.S. 1a.)

requirement for the at-large election of Escambia's county commissioners violates the fourteenth amendment.[9]

Further, appellees' description of the Fifth Circuit's holding is inaccurate. The court did not limit its holding to the actions by the County Commission on the proposals by the 1975 and 1977 charter committees. In upholding the district court's decision, the Fifth Circuit concluded:

> The [district] court relied on the aggregate of these findings involving *Zimmer* factors and other evidence in determining that *the at-large system in Escambia County is being maintained for discriminatory purposes*. . . . [W]e cannot say the district court's finding of intent was clearly erroneous.[10]

In conclusion, the court held: "we AFFIRM the district court's holding that the election system for the Escambia County Commission violates the fourteenth amendment."[11]

The County Commission's actions on the charter proposals were only one of the factors the court addressed. As discussed in the Brief of Appellants, at 29-32, the Fifth Circuit in *McMillan v. Escambia County, Florida ("McMillan I")*[12] specifically disagreed with the district court that the County Commission's actions on the charter proposals were racially motivated. In its brief discussion of those actions in *McMillan III*, the court did not retract its original conclusion. Indeed, the court stressed that "we do not depart from our prior conclusion that desire to maintain one's incumbency does not equal racially discriminatory intent."[13]

In their brief on appeal of the district court's actions on remand from the decision in *McMillan III*, filed after appellees filed their brief in the instant appeal, appellees described the decision in *McMillan III* as having "affirmed the District Court's judgment striking down the at-large county commission

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[9] *McMillan III*, 688 F.2d at 973. (J.S. 29a.)
[10] *Id.* at 969 (emphasis added). (J.S. 21a-22a.)
[11] *Id.* at 973. (J.S. 29a.)
[12] 638 F.2d 1239 (5th Cir. 1981). (J.S. 30a.)
[13] *McMillan III*, 688 F.2d at 969 n. 19 (J.S. 20a.)

election system and installing a court-ordered election plan."[14] Thus, it appears that even appellees honestly do not believe that the court's holding was limited to the County Commission's actions on the charter proposals.

B. The Purpose of Appellees in Bringing the Suit Was To Invalidate the State's At-Large Election System.

The Complaint,[15] Pretrial Stipulation,[16] statements at trial by counsel and Brief of Appellees confirm that the Fifth Circuit's decision could not have been directed solely to the County Commission's actions on the charter proposals. The Complaint makes no mention of those actions. Indeed, the decision to delete from the 1977 charter referendum a single-member district proposal was made after appellees filed the Complaint. The Complaint never was amended.[17] The primary relief appellees always sought was "a declaratory judgment that the election system[ ] complained of herein violate[s]" the federal Constitution and statutes.[18]

Similarly, the Pretrial Stipulation, filed long after the County Commission's actions on the charter proposals, makes no mention of those actions. Instead, in describing their case, appellees stipulated that "[p]laintiffs contend that, accordingly, the *at-large election systems* are fundamentally unfair, with respect to black citizens, and violate their rights. . . ," and that

> the evidence will show intentional, invidious *racial discrimination by the State of Florida, its officers and subdivisions* according to the following alternative standards.
>
> a. *The systems of at-large elections in both the primary and general elections,* . . . were each designed and

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[14]Brief of Appellees at 3, McMillan v. Escambia County, Fla., No. 83-3275 (11th Cir. appeal docketed Apr. 27, 1983).

[15](J.A. 45.)

[16](J.A. 64.)

[17]The fact that the Complaint does not mention that the injury appellees now claim is the result of the actions by the County Commission on the charter proposals further shows that appellees' case fails to satisfy the "case or controversy" requirement of U.S. Const. art. III, §2, cl. 1, Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 261 (1977). *See* Brief of Appellants at 28 n. 105.

[18]Compl. *ad damnum* clause. (J.A. 50.)

have been maintained purposefully and invidiously to discriminate against black voters.

b. . . . [T]he aforesaid *at-large election systems carry forward and perpetuate the effects of past intentional devices employed by the State* to discriminate against black voters.[19]

At trial, counsel for appellees stated: "Finally, with respect to application to Escambia County, Judge, it should be recognized that the county governments are presently operating under statewide statutes."[20] Lastly, the innumerable references throughout the Brief of Appellees to actions by the State, state officials and state entities dating back more than one hundred (100) years further show that appellees brought this suit to attack Florida's constitutional provision for at-large elections.

C. If the Decision of the Fifth Circuit Is Upheld, Florida Could Be Left with a State Constitutional Provision with No Application in Florida and with No Opportunity for the State To Have Its "Day in Court."

Upholding the Fifth Circuit's decision will allow others situated similarly to appellees to go county by county through Florida's remaining, sixty-one (61) non-charter counties challenging the State's constitutional requirement for the at-large election of county commissioners without ever suing the State, state entities or state officials. Even though, as here, those cases likely would be based primarily on actions taken at the state level, those responsible for the actions never would be required or given the opportunity to defend the allegations against them. Further, the counties and county officials sued may not be expected to defend adequately the actions of others.[21] As a result, Florida could be left with a constitutional

[19]Pretrial Stipulation ¶C(1), (3) (emphasis added). (J.A. 64, 65.)

[20]Transcript at 22. (J.A. 152.)

[21]To expose counties and county officials to such a possibility would be contrary to this Court's teaching in Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26 (1976), that "the 'case or controversy' limitation of Art. III still requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant and not injury that results from the independent action of some third party not before the court." 426 U.S. at 41-42.

provision with no application in Florida and with no opportunity for the State to have its "day in court." The same would be true in other states with similar state constitutional or statutory frameworks. This Court should not sanction such a denial of justice and open-ended invitation to federal litigation.

D. Even if the Court Were To Conclude That It Lacks Appellate Jurisdiction, Certiorari Should Be Granted.

Appellees next contend that, lacking appellate jurisdiction, the Court also should deny certiorari 1) because, if the Court reverses under the fourteenth amendment, it will have to remand the case for consideration under amended section 2 of the Voting Rights Act of 1965,[22] and 2) because the remedy issues appellants have raised are without merit.[23] Neither of these reasons would support a denial of certiorari.

Since this suit should have been brought against the State, state officials and/or state entities, a decision by any court on the fourteenth amendment, amended section 2 or remedy issues would be improper. For this reason alone, certiorari review of the Fifth Circuit's decision would be necessary.

1. The Possible Application of Amended Section 2 of the Voting Rights Act of 1965 Would Not Support a Denial of Certiorari.

Appellees' contention that a reversal under the fourteenth amendment would necessitate remand for consideration of amended section 2 presupposes that the Court first decides the case. If the Court were to deny certiorari, it would not reverse under the fourteenth amendment, and there would be no remand.[24] Appellees' reliance on *Cross v. Baxter*[25] is misplaced.

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[22]42 U.S.C.A. §1973 (West Supp. 1983).

[23]Brief of Appellees at 9-10.

[24]It is unlikely that the Court would evaluate appellees' claims first under the fourteenth amendment and then under amended section 2. The Court often has held that, when possible, a suit must be resolved on statutory rather than constitutional grounds. *E.g.*, United States v. Clark, 445 U.S. 23, 27 (1980). If the Court were to conclude that amended section 2 is applicable, it is, therefore, probable that it would weigh appellees' claims first under that statute.

[25]___ U.S. ___, 103 S.Ct. 1515 (1983).

In *Cross*, the Fifth Circuit held that plaintiffs had not shown that the at-large election system challenged violated the fourteenth amendment.[26] This Court granted certiorari and remanded for consideration of plaintiffs' claims under amended section 2. In contrast, the Fifth Circuit herein held that appellees had shown a fourteenth amendment violation. Because consideration of amended section 2 would not have affected the court's decision, it declined to address the amended section 2 issue.[27] Unlike *Cross*, a remand could not produce a different result. However, it would delay resolution of the case.

Additionally, there is no basis for appellees now to suggest that this Court is incapable of resolving amended section 2 issues when they have not been addressed below. Appellees previously claimed that the Fifth Circuit's decision summarily could be upheld under amended section 2 and presented arguments in support of that position.[28] Now that the Court has granted plenary consideration, appellees seek to avoid such consideration but this time due to the possible involvement of amended section 2. In any event, the plurality opinion in *City of Mobile, Alabama v. Bolden*[29] demonstrates that the Court can and will resolve statutory issues even when not addressed by the courts below.[30] Moreover, Congress enacted amended section 2 to codify the standards this Court articulated prior to *Bolden*.[31] Consequently, no court better is able to interpret and apply amended section 2 than this Court.

The possible involvement of amended section 2, however, does not warrant further briefing. Appellees were aware of and raised the amended section 2 issue and had the opportunity in their brief on the merits to address further that issue. However, they deliberately chose not to do so. Further briefing unduly would prolong the case and would burden the Court with additional, unnecessary briefs.

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[26]Cross v. Baxter, 688 F.2d 279 (5th Cir. 1982), *vacated*, ____ U.S. ____, 103 S.Ct. 1515 (1983).

[27]*McMillan III*, 688 F.2d at 961 n.2. (J.S. 3a.)

[28]Motion To Affirm or Dismiss at 7-12.

[29]446 U.S. 55 (1980).

[30]*Id.* at 60-61.

[31]S. Rep. No. 417, 9th Cong. 2d Sess. 28-30, *reprinted in* 1982 U.S. Code Cong. & Ad. News 177, 205-08.

2. The Decisions Below on the Remedy Have Far-reaching Consequences Both in Florida's Sixty-Two (62) Non-Charter Counties and, Nationwide, in Those Instances Where a Federal Court Has To Decide Whether To Substitute Its Will on Matters of Redistricting and Reapportioning for the Judgment of a Legislative Body.

The decisions below are based on interpretations of this Court's decisions and on disregard of the Florida Supreme Court's decisions on the powers of non-charter county county commissions.[32] The lower courts' decisions greatly expand the instances in which a federal court may impose a judicially created election system and apportionment plan and, in contravention of the Florida Supreme Court's interpretation, narrowly interpret the powers the Florida Constitution and statutes provide county commissions. If this Court holds for appellees on the liability issue, resolution of the remedy issue will be necessary not only to determine whether the courts below correctly have understood this Court's decisions regarding the circumstances in which a federal court is to defer to the judgment of a legislative body but also to avoid the lower courts' erroneous failure to follow the interpretation of the Florida Constitution and statutes by the Florida Supreme Court.

Appellants, therefore, are not "asking the Court to disregard the state constitution,"[33] but, rather, to uphold the Florida Constitution as interpreted by the body whose interpretation is controlling[34]. Appellants also are not asking the court "to inject itself unnecessarily in a question the Florida Legislature is about to consider"[35]. The July 19, 1983 letter from the Florida Attorney General on which appellees rely simply recommends that the Florida Legislature consider amending Florida's Constitution. Amending that Constitution is a time-consuming process which the Legislature lacks the power on its own to accomplish.[36] In effect, appellees want this Court to withhold otherwise proper relief based on the mere possibility that in

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[32]*See* Brief of Appellants at 42-49.

[33]Brief of Appellees at 10.

[34]*See* Brief of Appellants at 47n. 171.

[35]Brief of Appellees at 10.

[36]*See* Fla. Const. art. XI, §5.

several years the State may amend its Constitution in an unspecified way. Such a position is untenable. Moreover, implementation of the County Commission's remedy would not prevent consideration of a constitutional amendment.

Finally, the remedy the district court imposed on remand was premised on that court's conclusion that it was bound by the decision herein appealed.[37] Although this Court's resolution of the remedy issues might not resolve all of the issues presently on appeal of the district court's actions on remand, this Court's decision is likely to be dispositive of the threshold issue involved in that appeal – whether the courts below erred in adopting Justice White's analysis in *Wise v. Lipscomb*[38]. For these reasons, even if the Court holds that it lacks appellate jurisdiction, certiorari should be granted.

II. Even if the Fifth Circuit Had Based Its Decision on the County Commission's Actions on the Charter Proposals, That Decision Would Have Been Erroneous.

Even if the Fifth Circuit had upheld a finding that the County Commission's actions on the charter proposals were taken for discriminatory reasons, that decision would have been erroneous because there was no evidence that the County Commission's actions were racially motivated. In contending otherwise, appellees first claim that the Commissioners contradicted themselves.[39] Appellees' arguments are without merit. For example, the Commissioners' belief that the at-large system is best for Escambia is not inconsistent with the desire to maintain their incumbencies. Rather, it is a case where the interests of Escambia, as perceived by the Commissioners, coincide with the interests of the Commissioners, which, as the Fifth Circuit concluded, may not be translated into the desire to exclude potential black candidates.

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[37]McMillan v. Escambia County, Fla., 559 F.Supp. 720, 722, 725 (N.D. Fla. 1983) (Memorandum Decision), *appeal docketed,* No. 83-3275 (11th Cir. Apr. 27, 1983), *petition for cert. before judgment denied,* ___ U.S. ___, 104 S.Ct. 108 (1983).

[38]437 U.S. 535 (1978).

[39]Brief of Appellees at 11-13.

Similarly, the option some Commissioners exercised to select, from among roads needing repaving in their residency districts, roads to be repaved does not contradict their testimonies that they represent all of Escambia. Beck, on whose testimony appellees primarily rely, stated that most of the unpaved roads in Escambia were located in his residency district.[40] Because of the at-large system and the need for all commissioners to be responsive to the interests of the entire County, Beck further stated that the County Commission voted his residency district more road paving funds than the other districts.[41] After the County's engineering staff determined which roads needed repaving, Beck assisted that staff in determining which of the roads in his residency district were to be repaved.[42] Thus, the combination of the residency requirement and the at-large election system balance each other. The residency requirement ensures that the County Commission is comprised of persons who reside, and know the needs of the people, in all areas of the County while the at-large system ensures that the elected officials do not serve only the interests of the people in their residency districts.

Regarding the Commissioners' testimonies on the charter proposals, Deese was not unable to explain why, as a member of the second charter committee, he voted for the charter proposal "and then reversed his position when the charter came before the county commission[43]." Deese testified that he "did not object to" the recommendation by the committee for inclusion of a proposal for single-member district elections.[44] He voted for the charter proposal package as a whole. The County Commission made "a multiple of changes" to the committee's proposal, and Deese again voted for the proposal as a whole.[45] Appellees' assertion that Beck "had not consulted or heard from black citizens concerning their feelings about the election structure"[46]

[40]Transcript at 1468-69. (J.A. 474).

[41]*Id.* at 1469-70 (J.A. 474-75).

[42]*Id.* at 1474-76 (J.A. 478-79); *but see id.* at 1501-02 (testimony of Kelson that he left road paving matters entirely to the engineering staff) (J.A. 498).

[43]Brief of Appellees at 12.

[44]Transcript at 1543. (J.A. 529.)

[45]*Id.* at 1544-45. (J.A. 530.)

[46]Brief of Appellees at 12.

is untrue. Beck stated that he had heard from Lawrence Green, who favored the at-large system.[47] Beck simply was unable to remember the names of other blacks with whom he had spoken.[48]

Appellees' claim that Kenney's testimony at trial contradicted the views he expressed at a public hearing on the charter[49] also is untrue. At that hearing, Kenney said that he had not decided which election system he preferred. Immediately after making the statement appellees quoted, Kenney went on to state:

> That's one side of it . . . . We are coming here tonight to get ideas from the public to incorporate into the final document which will be presented in November and I would be glad to hear more from you in a personal way on what you think might be the reaction regarding additional candidates, a lot of people to choose from, and all political philosophies, . . . and all races. . . . I went along with this thing and my mind could be changed for very good reasons and I would like to talk to you more about it.[50]

At trial, Kenney stated that he voted for the at-large system because he had made up his mind that there are "issues and problems that transcend district lines."[51]

Finally, three Commissioners did not testify that they "would not consider blacks' vote dilution in deciding their preference for election plans[52]." Beck and Kelson testified that blacks had an equal chance to be elected under the at-large system.[53] Deese, when asked whether, "from a political science standpoint," he would favor an election system that gave minorities "the best opportunity for full representation" responded that he was not a political science expert.[54] These statements hardly may be taken as a refusal to consider the interests of blacks.

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[47]Transcript at 1491. (J.A. 491.)
[48]*Id.* at 1493. (J.A. 492.)
[49]Brief of Appellees at 12.
[50]Notice of Filing Exh. A at 2 (Plaintiffs' Exhibit 73). (J.A. 1135.)
[51]Transcript at 1558-59. (J.A. 540.)
[52]Brief of Appellees at 12.
[53]Transcript at 1489, 1510. (J.A. 488, 504.)
[54]*Id.* at 1545-46. (J.A. 530-31.)

Next, abandoning their previous reliance on the *Zimmer v. McKeithen*[55] factors,[56] appellees contend that, under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,[57] the finding that the County Commission's actions on the charter proposals were racially motivated was correct.[58] Even under the *Arlington Heights* analysis, that finding would be clearly erroneous. With respect to the impact of official action, appellees ignore the official action requirement. For example, in alluding to threats allegedly received by certain black candidates, only two (2) of whom ran for the County Commission, appellees acknowledge that the threats were made only by private individuals – "the hostility of the white electorate, much of it openly expressed."[59] Similarly, apart from the defects in the evidence concerning racially polarized voting,[60] voting is a personal right[61] and may not be characterized as official conduct.[62]

[55]485 F.2d 1297 (5th Cir. 1973), *aff'd on other grounds sub nom.* East Carroll Parish School Bd. v. Marshall, 424 U.S. 636 (1976).

[56]*See, e.g.*, Motion To Affirm or Dismiss at 3-7.

[57]429 U.S. 252 (1977).

[58]Brief of Appellees at 14-26.

[59]*Id.* at 17.

[60]*See* Brief of Appellants at 35-36.

[61]*See, e.g.*, Reynolds v. Sims, 377 U.S. 533, 580 (1964).

[62]As to appellees' allegations concerning the socio-economic conditions of the black community, Brief of Appellees at 19, appellees first fail to differentiate between the local governing bodies which have control over the areas in which blacks live. For example, appellees rely heavily on the testimony of Peter A. DeVries, the City Planner for Pensacola. He was called as a witness by the city defendants to discuss the efforts the City had made to improve the black community in Pensacola. Next, the documentary evidence to which appellees refer consists largely of studies the various local governments in Escambia and neighboring Santa Rosa County undertook to identify, and recommend solutions to, the problems in their communities. *See, e.g.*, Neighborhood Analysis Pensacola SMSA (Plaintiffs' Exhibit 17). (J.A. 798.) Rather than showing that the local governments were insensitive to the needs of blacks, this evidence shows that they actively were interested in improving the conditions of the black community.

As to appellees' contention that the at-large system has resulted in underrepresentation of blacks on county boards and committees, Brief of Appellees at 20, there is no support. The district court ad-

While the historical background on which appellees rely may involve official conduct, it is not the conduct of Escambia or its county commissioners. As appellees' brief makes clear, that historical background involves the conduct of the State, state officials and state entities. Typical is the assertion that "[t]he Florida Legislature and the Democratic Party bore the responsibility for the exclusion of blacks from the real election for county commissioners. . . ."[63] Whatever may be the merits of these assertions, they should be addressed only in a suit against those arguably responsible for that historical background.

Appellees' allegations concerning the sequence of events, procedural and substantive departures and legislative history surrounding the actions on the charter proposals are unsupported. The County Commission had no duty to consider a charter form of government. However, in 1975, it appointed a five (5)-member charter study committee, including one black,[64] to study the possibility of a charter government for Escambia. Three (3) members of that committee agreed on a proposed

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dressed jointly the appointments by the County Commission and the Pensacola City Council. The only explanation the court gave for the underrepresentation of blacks were statements by a former Mayor of Pensacola and a former city councilmember that blacks were not visible to them. McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 17 (N.D. Fla. July 10, 1978) (Memorandum Decision). (J.S. 87a.) There was no such evidence with respect to the Commissioners' appointments. Instead, the evidence shows that any black who expressed an interest in being appointed to a county board or committee would be appointed. *See, e.g.*, transcript at 1557-58 (testimony of Kenney). (J.A. 539.)

[63]Brief of Appellees at 22. In any event, appellees' allegations of prior discriminatory conduct at the state level stand in marked contrast with the current conduct of Escambia and the County Commission. In finding that the Commissioners generally are responsive to the needs of blacks, the district court recognized that "[t]heir efforts in employment and public recreation were impressive" and that they "listen to and act upon requests and complaints by blacks." McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 15 (N.D. FLa. July 10, 1978) (Memorandum Decision). (J.S. 85a.)

[64]Transcript at 576 (testimony of Tennant, chairperson of the charter study committee). (J.A. 312.)

charter and submitted a majority report.[65] Two (2) members disagreed with the idea of a charter and submitted a minority report.[66] The County Commission then appointed a second committee "to review the differences between the majority and minority report and come back with another document."[67] The second committee submitted another proposed charter.[68] The County Commission reviewed that proposal and agreed on a variety of changes, including the proposal for single-member district elections. As Tennant testified, however, the power to make those changes was within the purview of the County Commission: "[A]ny document prepared by the committee would have to go to the Board of County Commissioners for final ratification or for whatever usage they would prefer to put it to."[69] The charter proposal, as changed, was published in the

[65]Charter Government Study Committee Report (Plaintiffs' Exhibit 98). (J.A. 1155.)

[66](Plaintiffs' Exhibit 99.) (J.A. 1225.)

[67]Transcript at 580 (testimony of Tennant). (J.A. 315.)

[68]Charter Government Study Committee Report (Plaintiffs' Exhibit 100). (J.A. 1228.)

[69]Transcript at 582-83. (J.A. 316.) The charter committees only were advisory committees and not statutory charter commissions to whose proposals the County Commission was bound.

Appellees erroneously claim that the County Commission "controlled what charter propositions would be submitted to Escambia County's voters," Brief of Appellees at 22. Under Fla. Stat. § 125.61 (1981), if fifteen (15) percent of a county's electorate signs a petition requesting the establishment of a charter commission, the county commission must appoint a charter commission of between eleven (11) and fifteen (15) members. Unless extended, within eighteen (18) months, the charter commission must submit to the county commission a charter proposal; and, shortly thereafter, the county commission must hold a referendum. *Id.* §§125.63, 125.65 (1981). Blacks in Escambia comprised approximately seventeen (17) percent of Escambia's registered voters. *See* Brief of Appellants at 5. Their percentage of the electorate in and of itself would have enabled them to require the appointment of a charter commission.

Section 125.61 also allows a county commission to adopt a resolution calling for the appointment of a charter commission. It too must consist of between eleven (11) and fifteen (15) members. For this reason alone, the County Commission's charter committees were not statutory charter commissions but only advisory committees.

newspapers, and eight (8) public meetings on the proposal were scheduled.[70]

The primary concern among the electorate was whether a charter would establish a consolidated government with Pensacola.[71] The meetings, however, were sparsely attended.[72] Although appellees cite to the appearances at one of the meetings, all of which took place after the commencement of this suit, of three (3) blacks who expressed a preference for single-member district elections,[73] there certainly was no general sentiment shown by the black community in favor of a single-member district system. Further, even if blacks overwhelmingly had requested single-member district elections, the mere failure of the County Commission to accede to that request would not provide the basis for condemning its actions as racially motivated. Discriminatory purpose "implies that the decision-maker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group."[74] The charter committees' recommendations for a single-member district election system were not based on racial considerations;[75] and the County Commission's decision to include in the 1977 charter referendum a proposal for at-large elections was made for valid reasons unrelated to race.[76]

III. Whatever May Be the Merits of the Additional Bases Appellees Claim for Affirming the Judgment Below, They Should Be Addressed in a Suit Against the State, State Officials and/or State Entities.

Appellees next contend that the historical evidence and objective factors provide "additional fourteenth and fifteenth

[70]*See* Pensacola News-Journal – The Proposed Charter for Escambia County Government (Plaintiffs' Exhibit 72).

[71]*Id.* at 2; transcript at 575 (colloquy between the court, counsel for appellees and Tennant). (J.A. 311.)

[72]*E.g.* Transcript at 1500 (testimony of Kelson). (J.A. 497.)

[73]Brief of Appellees at 24-25.

[74]Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256, 279 (1979) (footnote omitted).

[75]*See* Brief of Appellants at 31 n.115.

[76]The County Commission could not have held a referendum solely to change the method of electing county commissioners. *See* Fla. Const. art. VIII, § 1(e).

amendment bases for affirming the judgment below."[77] This evidence and these factors, however, pertain only to the State. Indeed, in discussing the historical evidence in the context of their fifteenth amendment claim, appellees acknowledge that the suit should have been brought at the state level: "[F]ederal courts are not powerless to provide a remedy in those counties, like Escambia, *where the state cannot demonstrate affirmatively* that the unconstitutionally established at-large structure no longer disadvantages the class of black citizens."[78] Appellees have not allowed the State to demonstrate anything.[79]

The objective factors to which appellees refer, *e.g.*, the majority vote requirement in the primaries, the residency requirement, are provisions of the state Constitution and statutes[80]. Escambia and the County Commission, of course, are unable to enact or amend Florida's Constitution and statutes. In order to ensure satisfaction of the federal constitutional requirement of an actual "case or controversy," appellees claims based on the objective factors, and those based on state history, should be resolved only in a suit against those responsible for the harm appellees allege.

IV. The Decision Below May Not Be Upheld Under Amended Section 2 of the Voting Rights Act of 1965.

Assuming the Court concludes that appellees did not need to bring this suit against the State, state officials and/or state entities, the Court's decision in *Rogers v. Lodge*[81] suggests that the decision below still may not be affirmed under amended section 2 of the Voting Rights Act of 1965. As previously discussed, this Court has held that it will not decide a case on constitutional grounds where it may be decided on statutory grounds.[82] Appellees have pointed out that amended section 2 was applicable immediately to pending litigation.[83] Amended section 2 was in

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[77]Brief of Appellees at 26.

[78]*Id.* at 28 (footnote omitted) (emphasis added).

[79]The State was not notified of the suit as required by 28 U.S.C. §2403(b) (1976). *See* Jurisdictional Statement at 3.

[80]*See* Brief of Appellants at 3-6.

[81]458 U.S. 613 (1982).

[82]*See supra* note 24.

[83]Brief of Appellees at 9 n.4.

effect prior to this Court's decision in *Rogers*. Nevertheless, the Court based its decision entirely on the fourteenth amendment. The reasons which apparently led the Court to conclude that amended section 2 was inapplicable in *Rogers* apply to this suit and suggest that amended section 2 again is inapplicable.[14]

Even if the Court were to conclude further that amended section 2 is applicable, it still would not provide a basis for affirming the decision below. Appellants have demonstrated that the district court's finding of discriminatory intent and its subsidiary findings are clearly erroneous.[15] All that appellees have been able to show is that the three (3) blacks who ran for the County Commission were defeated and that blacks are not represented on the County Commission in proportion to their percentage of the population. The language of amended section 2 makes clear that lack of success at the polls and lack of proportional representation do not establish a violation. Accordingly, the decision below may not be affirmed under amended section 2.

V. The County Commission Was the Proper Legislative Body To Adopt as a Remedy a "Legislative Plan."

Appellees' suggestion that the imposition of a judicially created remedy was correct because the district court found that the County Commission had acted for discriminatory reasons and because Escambia's voters rejected the remedy the County Commission adopted[16] is premised on an inaccurate statement of fact and a position this Court has rejected. Escambia's voters did not reject the County Commission's remedy. They rejected a charter proposal which included an election system similar to the remedial election system the County Commission adopted.[17] In 1977, however, the voters rejected a charter proposal which retained the at-large system. The rejection of the 1979 charter proposal, therefore, was not a rejection of the County Commission's remedy but of a charter form of government.[18]

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[14] *But cf.* Cross v. Baxter.

[15] Brief of Appellants at 29-42.

[16] Brief of Appellees at 37.

[17] *See* Brief of Appellants at 12-13.

[18] *Id.* at 31-32.

Further, the notion that the court could not implement the County Commission's remedy because the court had found that the County Commission had acted for discriminatory reasons is tantamount to arguing that remedial redistricting and reapportioning may be performed only by courts and never by legislative bodies. Even Justice White's analysis in *Wise v. Lipscomb*, on which appellees rely so heavily, rejects this view. The district court in *Wise* found against Dallas' legislative body.[89] Nevertheless, Justice White concluded that the remedy that body adopted could be implemented as a "legislative plan."[90] A finding against a legislative body, thus, does not require imposition of a judicially created remedy.

A. In *McDaniel v. Sanchez*, the Court Resolved the Issue Left Open in *Wise*.

Appellees misinterpret appellants' position on *McDaniel v. Sanchez*[91] as being that it overruled *Wise*.[92] Appellants made no such argument because there was no holding in *Wise* on the manner of determining the characteristics of a "legislative plan." Indeed, that was the issue on which the opinions of Justices White and Powell differed. In *McDaniel*, the Court resolved the difference by adopting Justice Powell's analysis.

Appellees' contention that *Wise* and *McDaniel* involved different issues[93] is refuted by the lengthy discussion of the opinions in *Wise* and the observation that "both Justice WHITE's opinion and Justice POWELL's opinion surely foreshadowed the holding we announce today."[94] Although the ultimate issue to be decided in *McDaniel* differed from that in *Wise*, the adoption of Justice Powell's analysis in no way was limited to those instances in which a remedy is adopted by a legislative body subject to preclearance under section 5 of the Voting Rights Act of 1965[95].

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[89] 437 U.S. at 537-38 (White, J.).

[90] *Id.* at 546, *accord id.* at 549 (Powell, J.).

[91] 452 U.S. 130 (1981).

[92] *See* Brief of Appellees at 40.

[93] *Id.* at 42.

[94] *McDaniel*, 452 U.S. at 146.

[95] 42 U.S.C. §1973c (1976).

B. The Courts Below Incorrectly Applied Justice White's Analysis in *Wise*.

Even if the Court holds that Justice White's analysis controls, the lower courts erred in applying that analysis. Appellees' arguments to the contrary reflect a fundamental misunderstanding of Justice White's opinion. This is reflected most clearly in their reliance on the July 19, 1983 letter from the Florida Attorney General[96]. Although, because that letter is not part of the record, appellants are unable to determine with certainty the context in which the letter was written, it apparently was not addressed to the issues presented by Justice White's opinion. The letter refers to Fla. Const. art. VIII, §1(e); Fla. Stat. §124.01 (1981). Article VIII, section 1(e) is the state provision for at-large elections challenged herein. Section 124.01 references that provision and provides for the periodic reapportionment of the county commissioners' residency districts. Appellants do not dispute that these provisions do not authorize the County Commission to change the method of electing county commissioners or that, ordinarily, the County Commission may not change the election system. In this regard, the case is similar to *Wise* wherein the argument was made that the City Council lacked the power to adopt a remedy "because the at-large system declared unconstitutional was established by the City Charter and because, under the Texas Constitution . . . and Texas statutory law, . . . the Charter cannot be amended without a vote of the people."[97] In concluding that the City Council's remedy was a "legislative plan," Justice White accepted the district court's reasoning that the City Council "was not purporting to amend the City Charter but only to exercise its legislative powers as Dallas' governing body" and further noted that there was no prohibition on the City Council's authority to enact a remedial election plan.[98]

Similarly, the County Commission was not acting to change Florida's Constitution or to deprive the voters of Escambia of their right to adopt a charter. Rather, apart from exercising its legislative judgment, the County Commission was exercising the home rule powers Fla. Const. art. VIII, §1(f); Fla. Stat.

[96]Brief of Appellees at 38-39.

[97]437 U.S. at 544 (White, J.).

[98]*Id.* & n.8.

§125.01(3)(b) (1981) confer on county commissions. Finally, whereas Fla. Const. art. VIII, §1(f); Fla. Stat. §125.01 (1981), do not prohibit county commissions from acting as the County Commission acted,[99] Fla. Const. art. III, §11 prohibits the Florida Legislature from enacting a special law or a general law of local application concerning elections. Accordingly, under Justice White's analysis, the County Commission had the power and was the proper legislative body to adopt a "legislative plan."

CONCLUSION

For the foregoing reasons and the reasons set forth in the Brief of Appellants, the judgment of the Fifth Circuit in *McMillan III* should be reversed.

Respectfully submitted,

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[99]It is noteworthy that the Attorney General's July 19, 1983 letter is at odds with his Op. Att'y Gen. 081-48 (1981) wherein he advised that county commissions may act through their home rule powers unless the Legislature preempts the area. *See* Motion for Leave To File and Brief of Amici Curiae State Association of County Commissioners of Florida, Inc. and the Undersigned Non-Charter Counties of the State of Florida in Support of Appeal at 17-18.

Office - Supreme Court, U.S.
FILED
JAN 26 1984
ALEXANDER L. STEVAS,
CLERK

No. 82-1295

IN THE
Supreme Court of the United States
October Term, 1983

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE AND RESPONSE OF APPELLANTS KENNETH J. KELSON, MAX L. DICKSON, JOHN E. FRENKEL, JR., BILLY G. TENNANT, GERALD WOOLARD AND MARVIN BECK TO SUPPLEMENTAL BRIEF OF APPELLEES

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MOTION OF APPELLANTS KENNETH J. KELSON, MAX L. DICKSON, JOHN E. FRENKEL, JR., BILLY G. TENNANT, GERALD WOOLARD AND MARVIN BECK FOR LEAVE TO FILE RESPONSE TO SUPPLEMENTAL BRIEF OF APPELLEES.

Pursuant to Sup. Ct. R. 35, Appellants Kenneth J. Kelson, Max L. Dickson, John E. Frenkel, Jr., Billy G. Tennant, Gerald Woolard and Marvin Beck, through counsel, hereby move this Court for leave to file a response to the Supplemental Brief of Appellees. The grounds supporting this motion are as follows:

1) The Supplemental Brief of Appellees questions whether this appeal may go forward and, if so, whe-

ther one of the primary issues involved in the appeal has been rendered moot;

2) The seriousness of appellees' allegations and the consequences which could result if the Court were to accept them make necessary a response to appellees' brief;

3) Counsel for appellants received the Supplemental Brief of Appellees on January 6, 1984, only four (4) days, two (2) working days, prior to the January 10, 1984 oral argument in this action;

4) Due to the proximity in time to the oral argument and the preparations for that argument, counsel for appellants had insufficient time prior to the oral argument to research and prepare a response to the Supplemental Brief of Appellees;

5) In this regard, it is noteworthy that the majority of the Supplemental Brief of Appellees is devoted to events which took place approximately one (1) month before appellees filed their brief;

6) Nevertheless, appellees waited until almost the last possible moment before the oral argument to address these events;

7) The remaining matters raised in the Supplemental Brief of Appellees pertain to events which took place on the same day appellees mailed their eleven (11)-page, printed brief; and

8) The Court should be aware of the circumstances surrounding the ability of appellees to accomplish this task.

For the foregoing reasons, the Court should grant appellants leave to file the accompanying response to the Supplemental Brief of Appellees.

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IN THE

Supreme Court of the United States

October Term, 1983

No. 82-1295

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,

v.

HENRY T. McMILLAN, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE OF APPELLANTS KENNETH J. KELSON, MAX L. DICKSON, JOHN E. FRENKEL, JR., BILLY G. TENNANT, GERALD WOOLARD AND MARVIN BECK TO SUPPLEMENTAL BRIEF OF APPELLEES.

Appellants Kenneth J. Kelson ("Kelson"), Max L. Dickson ("Dickson"), John E. Frenkel, Jr. ("Frenkel"), Billy G. Tennant ("Tennant"), Gerald Woolard ("Woolard") and Marvin Beck ("Beck"), through counsel, submit this response to the Supplemental Brief of Appellees.

ARGUMENT[1]

I. The Implementation of Relief While an Appeal Is Pending Should Not Deny the Right of Appeal.

Appellees' contention that the vote to dismiss this appeal by three (3) of the five (5) persons elected on No-

[1]Citations to materials which appear in: the Jurisdictional Statement are to "J.S.;" and the Joint Appendix are to "J.A."

vember 1, 1983, under the district court's single-member district election system and apportionment plan precludes maintenance of this appeal[2] raises the issue whether the implementation of relief while an appeal is pending may deny the right of appeal. This issue is particularly significant because there is a serious question whether the court which, on March 11, 1983, issued the Order[3] resulting in the election of the three (3) persons ever had jurisdiction over the case.[4]

A. The Persons Who Voted To Dismiss the Appeal Should Not Be Allowed To Assume Any Role as Appellants or To Affect the Maintenance of This Appeal.

The persons who voted to dismiss the appeal are the direct beneficiaries of the relief appellees have sought. Indeed, one of those persons, Willie J. Junior ("Junior"), is a member of the appellee class. As such, he already is an appellee to this action. His status as an appellee emphasizes the extent to which the interests of those elected under the district court's Order who voted to dismiss the appeal directly conflict with the interests of the original

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[2]Supplemental Brief of Appellees at 4-11. The three (3) persons who voted to dismiss are: Phillip M. Waltrip; Grady Albritton; and Willie J. Junior. Kelson and Dickson voted against dismissal.

[3]McMillan v. Escambia County, Florida, PCA No. 77-0432 (N.D.Fla. Mar. 11, 1983), *appeal docketed,* No. 83-3275 (11th Cir. Apr. 27, 1983), *petiton for cert. before judgment denied,* ____ U.S. ____, 104 S.Ct. 108 (1983). (A copy of this Order is attached as Appendix B to the May 18, 1983 Application for Stay of Enforcement of Judgment of the United States Court of Appeals for the Fifth Circuit filed in this Court.)

[4]*See* Brief of Appellants at 27-29 & n. 105; Reply Brief of Appellants Kenneth J. Kelson, Max L. Dickson, John E. Frenkel, Jr., Billy G. Tennant, Gerald Woolard and Marvin Beck at 3-6 & nn. 17 & 21, 15-16.

appellants.[5] As such, the vote to dismiss should be given no effect.

Further, this Court should not allow the persons who voted to dismiss the appeal to assume any role as appellants so as to deny the original appellants of their right of appeal.[6] To do so under the circumstances of this case would create federal jurisdiction where it otherwise is lacking. Escambia and the County Commission have no control over the election process in Escambia because, under Florida law, that process is under the direction and control of Florida's Department of State.[7] Under these circumstances, there is no merit to appellees' claim that all appellants have no standing to maintain this appeal. Appellants should be allowed to clear their names and the original commissioner appellants should be allowed to regain their offices.

B. This Appeal May Be Maintained by Persons Sued in Their Individual Capacities.

Even if the Court gives effect to the vote to dismiss the appeal and considers as appellants the persons who cast the votes to dismiss, there may be no doubt that the appeal may go forward. As the caption of the Complaint[8] makes clear, appellees sued the members of the Escambia Coun-

[5]The vote to dismiss the appeal was 3-2; Junior cast the deciding vote.

[6]Appellants are aware of Sup.Ct. R. 40.3 which provides for the substitution in their official capacities by their successors of public officers who cease to hold office during the pendency of proceedings before the Court. In this case, however, the persons who voted to dismiss the appeal did not assume office under Florida law, as did the original commissioner appellants, but rather pursuant to a court order the validity of which is largely dependent on the outcome of this appeal.

[7]*See, e.g.*, Fla. Stat. §§ 97.012 (1981).

[8](J.A. 45.)

ty, Florida ("Escambia") Board of County Commissioners ("County Commission") in their individual and official capacities. Kelson was elected to the County Commission pursuant to Fla. Const. art. VIII, § 1(e), was in office when the suit was filed and remained in office at all times through the filing of this appeal and the Brief of Appellants. In addition, on November 1, 1983, Kelson was elected to the County Commission under the district court's election system and apportionment plan. Although, as appellees point out, the district court left Kelson and the other Commissioners in the case individually for purposes of enforcing any orders it might issue,[9] the fact nevertheless remains that there is a judgment outstanding against Kelson individually, and he should be allowed the right to clear his name.

In addition to Kelson, this appeal may be maintained by Dickson. Paragraph 10 of the district court's Pre-Trial Order[10] provided that when a defendant was substituted in his or her official capacity that person would be taken out of the case individually as well as officially and the successor would be substituted individually as well as as officially. Dickson, therefore, has been substituted individually and officially for one of the Commissioners who was in office when the appeal was filed, and he too may maintain this appeal.

The cases on which appellees rely to suggest that neither Kelson nor Dickson may maintain the appeal in their individual capacities fail to support appellees' position. For example, *Alianell v. Fossey*[11] does not stand for the prop-

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[9]Brief of Appellees at 5-6, 7.

[10]McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D. Fla. May 12, 1978). (J.A. 79.)

[11]114 So.2d 372 (Fla. Dist. Ct. App. 1959).

osition that Florida law "prohibits a suit against commissioners in their individual capacities[12]." That was not an issue in the case. In *Alianell,* the commissioners were not sued in their individual capacities. Rather, the suit was brought against the persons comprising the Dade County county commission. In holding that the suit "was not in appropriate form," the court concluded that "the individuals making up the county commission were not proper defendants" because, under Florida law, a suit to challenge the action of a county commission is not to be brought against the persons comprising the county commission but against the county.[13] Accordingly, insofar as appellees' Complaint in the instant suit was brought against the members of the County Commission in their official capacities, the Complaint suffers from the same defect as the complaint in *Alianell.*

Appellees' reliance on *Smuck v. Hobson*[14] also is misplaced. Again, there was no issue whether members of District of Columbia Board of Education could maintain an appeal in their individual capacities because the suit was brought against them in their official capacities. This difference explains why the court held that the former Superintendent of Schools, Dr. Hansen, could not maintain the appeal. The Board of Education decided not to appeal the district court's order and, thereafter, Dr. Hansen resigned as Superintendent. The court held that Dr. Hansen could not appeal in his official capacity because "[w]hatever standing he might have possessed to appeal as a named defendant in the original suit, however, disappeared when Dr. Hansen left his official position."[15] The

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[12]Supplemental Brief of Appellees at 8.

[13]*Alianell,* 114 So.2d at 373 & n. 2.

[14]408 F.2d 175 (D.C. Cir. 1969).

[15]*Id.* at 177.

court also rejected Dr. Hansen's subsequent motion "to intervene . . . in order to appeal as an individual" because the suit did not attack him personally and because, due to his resignation, a reversal or modification of the district court's order would have no effect on his tenure in office.[16]

Similarly, the court also held that Mr. Smuck, a member of the Board of Education, could not maintain the appeal. He was sued only in his capacity as a member of the Board,[17] an official capacity. The language of the opinion appellees quote[18] is taken out of context. Rather than concluding that Mr. Smuck could not maintain the appeal in his individual capacity, that language simply explains why a single member of the Board of Education could not maintain the appeal, in his or her official capacity, contrary to the will of the Board as a whole.

Moreover, appellees' position is in conflict with the position appellees previously have taken in this case. The appeal of that part of the district court's decision striking down the at-large system of electing persons to the Escambia School Board[19] was filed only by Carol Ann Marshall ("Marshall"), who appellees sued in her individual and official capacities. Even though the School Board voted not to appeal, appellees never objected to the maintenance of the appeal by Marshall; and her appeal went forward.

Following the Fifth Circuit's decision upholding the district court's decision with respect to the School Board,[20]

[16] *Id.*

[17] *Id.*

[18] Supplemental Brief of Appellees at 10.

[19] McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D.Fla. July 10, 1978) (Memorandum Decision). (J.S. 71a).

[20] McMillan v. Escambia County, Fla., 638 F.2d 1239 (5th Cir. 1981). (J.S. 30a.)

appellees took the position that Marshall had taken the appeal in her individual capacity.[21] Notwithstanding the provision in paragraph 9 of the Pre-Trial Order[22] that appellees would not seek attorneys' fees or costs against any defendant in his or her individual capacity, appellees sought from the district court an award of attorneys' fees and costs against Marshall personally.[23] In addition, appellees received attorneys' fees and costs from Marshall.[24] Accordingly, all appellants have standing to maintain this appeal.

II. Recent Events Have Not Rendered Moot the Remedy Issue.

Neither the March 11, 1983 Order imposing the district court's election system and apportionment plan nor the January 5, 1984 ratification by the three (3) persons who voted to dismiss the appeal of that election system and apportionment plan, which resulted in their election, renders moot the remedy issue. The issue before this Court with respect to the remedy is whether the lower courts erred in holding that no remedy adopted by the County Commission could be considered as a "legislative plan" and that,

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[21]Plaintiffs' Motion and Brief for Award of Attorneys' Fees and Costs ¶ 1. (This motion is reprinted in Appendix A to this brief.)

[22](J.A. 78-79).

[23]Plaintiffs' Motion and Brief for Award of Attorneys' Fees and Costs. By letter to counsel and Marshall dated December 7, 1981, the district court authorized appellees to file their motion for attorneys' fees and costs. (This letter is reprinted in Appendix B to this brief.)

[24]McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D. Fla. May 24, 1982) (Consent Judgment). (The Consent Judgment is reprinted in Appendix C to this brief.) As reflected by the district court's docket sheets (J.A. 27-28), there was a substantial amount of litigation over appellees' claim for attorneys' fees and costs against Marshall. The Consent Judgment simply provided an end to this protracted litigation.

therefore, it was necessary for a judicially-created election system and apportionment plan to be imposed.[25] The district court's March 11, 1983 Order, like its December 3, 1979 Order,[26] was a judicially-created remedy granting appellees proportional representation.[27] The court imposed that remedy because it held that the Fifth Circuit's decision in *McMillan v. Escambia County, Florida ("McMillan III")*[28] required it to do so.[29] As such, the district court

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[25] *See* Brief of Appellants at i, 42-49.

[26] McMillan v. Escambia County, Fla., PCA No. 77-0432 (N.D.Fla. Dec. 3, 1979). (J.S.59a.)

[27] *See infra* note 29.

[28] 688 F.2d 960 (5th Cir. 1982). (J.S.1a.)

[29] McMillan v. Escambia County, Fla., 559 F.Supp. 720, 725, 730 (N.D.Fla. 1983) (Memorandum Decision), *appeal docketed*, No. 83-3275 (11th Cir. Apr. 27, 1983), *petition for cert. denied*, ____ U.S. ____, 104 S.Ct. 108 (1983). It is noteworthy that, in substance, the March 11, 1983 Order is the same as the December 3, 1979 Order. The December 3, 1979 Order provides for a single-member district election system with five (5) districts and further provides: "District 3 was deliberately designed to effectuate a 55 per cent black population majority and a 60 per cent black electoral majority within the district. All other districts were designed without regard to race." McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1, app. at 2. (J.S. 59a, 63a.) Similarly, the March 11, 1983 Order provides for a single-member district election system with five (5) districts and apportions district 3 to provide a 63.5 percent black population majority and a 55.7 percent black registered voter majority. McMillan v. Escambia County, Fla., PCA No. 77-0432, typescript op. at 1, Exh. A at 4.

There may be no doubt, therefore, that both Orders grant appellees proportional representation. *But see* McMillan v. Escambia County, Fla., 559 F.Supp. at 729 (contention by district court that "devising an election plan of five districts, one of which contains a majority of black population and registered voters" does not provide "guaranteed proportionate representation"). By providing appellees with proportional representation, both Orders not only violate amended section 2 of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973 (West Supp. 1983), but also stand in conflict with this Court's rejection of the right to proportional representation in such cases as City of Mobile, Ala. v.

simply was implementing its interpretation of the decision herein appealed. If it becomes necessary for the Court to reach the remedy issue, its decision is likely to be dispositive of the issue of whether the district court was correct in imposing a judicially-created remedy, which

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Bolden, 446 U.S. 55, 75-76 (1980) (plurality opinion); *id.* at 86-88 & n. 10 (Stevens, J., concurring in the result); White v. Regester, 412 U.S. 755, 765-66 (1973); Whitcomb v. Chavis, 403 U.S. 124, 149-50 (1971).

The fact that the remedy the County Commission adopted on remand, like the remedy it previously adopted, did not guarantee appellees seats on the County Commission in proportion to their population percentage, but rather with fourteen (14) percent of the seats, also led the district court, in dictum, to conclude that, even if it were not bound by the "law of the case," it would not have implemented as a "legislative plan" the County Commission's remedy because it would not have precleared the remedy under subsection 3(c) of the Voting Rights Act of 1965, 42 U.S.C. § 1973a(c) (1976). McMillan v. Escambia County, Fla., 559 F.Supp. at 726, 730. This conclusion is at odds with the Fifth Circuit's suggestion in *McMillan III* that, if it had adopted the other analysis which led to the decision in Wise v. Lipscomb, 437 U.S. 535 (1978), it would have allowed the County Commission's remedy to be implemented as a "legislative plan." 688 F.2d at 972 n. 25.

In arriving at this conclusion, the Fifth Circuit relied largely on its decision in the companion case of Jenkins v. City of Pensacola, Fla., 638 F.2d 1249 (5th Cir. 1981), *appeal* and *petition for cert. dismissed per stipulation*, 453 U.S. 946 (1981). In *Jenkins*, the court upheld implementation as a "legislative plan," without need for subsection 3(c) preclearance, of a remedy the Pensacola City Council adopted providing for a ten (10)-member city council with seven (7) members to be elected from single-member districts and three (3) members to be elected at-large. The County Commission's remedies provided for a seven (7)-member county commission with five (5) members to be elected from single-member districts and two (2) members to be elected at-large and, thus, are similar to the City Council's remedy. If this Court reaches the remedy issue and holds that the courts should have considered the County Commission's remedy as a "legislative plan," this Court's reasoning will aid the Eleventh Circuit in its disposition of the issues which have arisen on remand of the decision herein appealed.

remedy provides appellees with proportional representation. The March 11, 1983 Order, therefore, has not rendered moot the remedy issue.

Similarly, the January 5, 1984 action by the three (3) persons who voted to dismiss the appeal to approve the election system and apportionment plan[30] which resulted in their election may not render moot the remedy issue. That action, which appellees contend now should be considered the County Commission's remedy,[31] is totally inconsistent with the nature of a "legislative plan." A "legislative plan" is adopted prior to the effectuation of a remedy and is adopted for the purpose of providing the court with a remedy which reflects the legislative judgment of the entity which generally is responsible for redistricting and reapportioning.[32]

Here, the January 5, 1984 approval of an election system and apportionment plan took place subsequent to the district court's imposition of its election system and apportionment plan. The January 5, 1984 election system and apportionment plan, therefore, did not provide the district court with legislative guidance in its determination of a remedy. Rather, the approval of the district court's March 11, 1983 remedy only may be seen as a self-serving gesture

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[30]The apportionment plan approved on January 5, 1984, conflicts with the apportionment plan the County Commission adopted on December 22, 1981, in compliance with the "one person, one vote" standard provided for by the Florida Constitution and statutes, *see* Brief of Appellants at 17 & n. 79, 42 n. 157. By approving the district court's apportionment plan, the persons who voted to dismiss the appeal lawfully could not change the apportionment plan adopted on December 22, 1981.

[31]Supplemental Brief of Appellees at 3.

[32]*See, e.g.*, Upham v. Seamon, 456 U.S. 37, 41-42 (1982); Wise v. Lipscomb, 437 U.S. 535, 539-40 (1978) (White, J.); *id.* at 548 (Powell, J.); White v. Weiser, 412 U.S. 783, 794-95 (1973).

by the beneficiaries of the relief appellees sought and obtained designed to ratify their method of election and to deprive this Court of jurisdiction over the remedy aspect of this appeal.[33]

Moreover, the circumstances surrounding the ratification of the district court's election system and apportionment plan also suggest that the vote should be disregarded. The vote was prompted by Junior[34] who, as previously discussed, is an appellee in this action. Further, this matter was raised only by appellees; and it was raised in an eleven (11)-page brief which was mailed on January 5, 1984, the same day as the vote on this add-on item to the County Commission's agenda. It is inconceivable that appellees could have written their brief, had it printed and mailed it on the same day as the vote unless appellees at least had some prior knowledge of the plan to urge and pass the vote at that time. The ratification of the district court's election system and apportionment plan should be given no effect and, in any event, should not render moot the remedy, or any other, issue present in this case.

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[33]It is unimaginable that the persons who now have adopted the district court's election system and apportionment plan would have adopted an election system and apportionment plan other than the one which the court ordered and which led to their election.

[34]*See* The Pensacola Journal, Jan. 6, 1984, at C 1, col. 2. (A copy of this article is reprinted as Appendix D to this brief.)

CONCLUSION

For the foregoing reasons, appellants have standing to maintain this appeal and recent events have not rendered moot the remedy issue; and for the reasons set forth in the Brief of Appellants and the Reply Brief of Appellants Kenneth J. Kelson, Max L. Dickson, John E. Frenkel, Jr., Billy J. Tennant, Gerald Woolard and Marvin Beck, the judgment of the Fifth Circuit in *McMillan III* should be reversed.

Respectfully submitted,

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APPENDIX A
Appellees' Motion for Attorneys' Fees and Costs Against Carol Ann Marshall

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HENRY T. McMILLAN, et al., Plaintiffs,	)	
vs.	)	PCA 77-0432
ESCAMBIA COUNTY, FLORIDA, et al., Defendants.	)	

PLAINTIFFS' MOTION AND BRIEF FOR AWARD OF ATTORNEYS' FEES AND COSTS

Pursuant to instructions from the Court dated December 7, 1981, plaintiffs move the Court to award reasonable attorneys' fees and costs, and as grounds therefor would show the Court as follows:

1. Pursuant to this Court's order of February 18, 1979, plaintiffs were determined to be the prevailing parties in this litigation and entitled to an award of attorneys' fees and costs by plaintiffs for work performed in the District Court up through and including December 31, 1978. By consent order dated August 31, 1981, this Court approved an agreement between the plaintiff and the defendants, School District of Escambia County; School Board of Escambia County; Peter Gindl, Richard Leeper, Lois Suarez, A.P. Bell, Frank Biasco, James Bailey, Carol Marshall or the successors in office, in their official capacities as members of the Escambia County School

Board for satisfaction of all plaintiffs' claims against said defendants for attorneys' fees and costs, but specifically reserving to plaintiffs the right to claim appellate attorneys fees against Appellant/Defendant Carol Marshall, individually. The mandate of the Fifth Circuit Court of Appeals issued on November 12, 1981, and by letter of December 7, 1981, the Court allowed plaintiffs to file appropriate motion and supporting affidavits for a claim of attorneys' fees and costs. Attached hereto are affidavits of J.U. Blacksher, Larry T. Menefee and W. Edward Still, attorneys for the plaintiffs in this action. These three affidavits reflect time spent by the plaintiffs' attorneys in behalf of plaintiffs claims herein. These three affidavits reflect the following time attributable to work protecting the interest of plaintiffs' in connection with the appeal filed by Defendant Carol Marshall, in her individual capacity as follows:

J.U. Blacksher	62.0
Larry T. Menefee	29.2
W. Edward Still	5.9
TOTAL HOURS	97.1

2. The accompanying affidavits of Mr. Still and Mr. Menefee reflect costs, not the subject of any prior orders of this Court, incurred by plaintiffs in relation to the appeal filed by Carol Marshall as follows:

Blacksher, Menefee & Stein, P.A.	$450.56
W. Edward Still	123.25
TOTAL COSTS	$573.81

3. In light of the standards enunciated by the court of appeals in *Johnson v. Georgia Highway Express,* and with

the guidance of the *Code of Professional Responsibility,* the plaintiffs request that the Court determine that a reasonable fee in this action would be $85.00 per hour, plus a contingent bonus of 50 per cent. Plaintiffs contend that in light of the protracted, highly contingent and uncertain nature of this litigation, the value of the rights which have been protected, experience of counsel and preclusion of other work, this fee request is reasonable.

WHEREFORE, plaintiffs move the Court for an award of attorneys' fees and costs in the amount of $12,954.06.

Respectfully submitted this 21st day of December, 1981.

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BY: /s/ Larry T. Menefee
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I do hereby certify that on this 21st day of December, 1981, I served a copy of PLAINTIFFS' MOTION AND BRIEF FOR AWARD OF ATTORNEYS' FEES AND COSTS upon counsel of record: Louis Ray, Esquire, 6th Floor, Seville Tower, 226 Palafox Street, Pensacola, Florida 32501; Patricia D. Wheeler, Esquire, 28 West Government Street, Pensacola, Florida 32501; Charles Rhyne, Esquire, Rhyne & Rhyne, 1000 Connecticut Avenue, N.W., Suite 800, Washington, D.C. 20036; and Don Caton, Esquire, P.O. Box 12910, Pensacola, Florida 32521, by depositing same in the United States mail, postage prepaid.

/s/ Larry T. Menefee

ATTORNEY FOR PLAINTIFF

APPENDIX B
Letter from District Court Authorizing Appellees To Move for Attorneys' Fees and Costs Against Carol Ann Marshall

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Post Office Box 12347
Pensacola, Florida 32581

December 7, 1981

Winston E. Arnow
Senior Judge

TO COUNSEL OF RECORD AND
MS. CAROL ANN MARSHALL

RE: Henry T. McMillan, et al v. Escambia County, Florida, et al - PCA 77-0432

Dear Counsel and Ms. Marshall:

Under the consent order entered by this court on August 31, 1981, plaintiffs reserved only the right to claim appellate attorneys' fees against appellant/defendant Carol Marshall, individually.

The mandate has now come down so the case is ready for final disposition. By letter of November 19, 1981, the parties were asked what further action needs to be taken.

Mr. Menefee has responded, suggesting that plaintiffs be given three weeks in which to file appropriate motion seeking fees and costs on appeal against appellant Carol Marshall with defendants given two weeks to respond to such motion.

The only one to reply is Mr. Ray by a letter of December 3, 1981. Apparently he wrote his letter without looking at the order of August 31, 1981.

Accordingly, plaintiffs are required to file appropriate motion, with supporting affidavits for fees and costs claimed in connection with the appellate work against defendant Carol Marshall within fifteen (15) days after date.

In filing affidavits, plaintiffs, and any opposing parties, shall consider and comply with the requirements of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

Mr. Menefee suggests that the "defendants" be given a two week period after plaintiffs file their motion. On the face of it, it would seem to me only Ms. Marshall is concerned. However, Mr. Ray has undertaken to express himself and it may be others wish to respond to any motion. Accordingly, Ms. Marshall, and all other defendants, have two weeks after plaintiffs file to respond to plaintiffs' motion.

Sincerely yours,

/s/ Winston E. Arnow
WINSTON E. ARNOW

WEA/jag

Counsel: James U. Blacksher, Esq.
Kent Spriggs, Esq.
Eric Schnapper, Esq.
Patricia Wheeler, Esq.
Charles S. Rhyne, Esq.
Larry T. Menefee, Esq.
Jack Greenberg, Esq.
Edward Still, Esq.
Louis F. Ray, Jr., Esq.
William S. Rhyne, Esq.

APPENDIX C
Consent Judgment Awarding Appellees Attorneys' Fees and Costs Against Carol Ann Marshall

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

HENRY T. McMILLAN, et al., Plaintiffs,	*	
vs.	*	CIVIL ACTION No. 77-0432
ESCAMBIA COUNTY, FLORIDA, et al., Defendants.	*	

CONSENT JUDGMENT

The Court has before it the joint motion to approve consent judgment filed by the Plaintiffs and Defendant Carol Ann Marshall. Defendant Escambia County, Florida agrees that the Plaintiff's motion to hold it jointly and severally liable should be dismissed without prejudice. The Court after consideration of the motion of the parties determines that the proposed settlement is reasonable and fair and that such be and hereby is granted and approved.

Accordingly, it is therefore ORDERED, ADJUDGED, and DECREED as follows:

1. Plaintiffs' motion for attorneys' fees and costs, as amended, against Carol Ann Marshall filed herein on December 21, 1981 is hereby settled and dismissed.

2. Plaintiffs' claim in their motion of March 24, 1982

to have Escambia County, Florida held jointly and severally liable for attorneys' fees and costs claimed by plaintiffs in their motion of December 21, 1981 as amended is dismissed without prejudice.

3. Under the settlement Carol Ann Marshall shall pay $8,000 to plaintiffs. This sum settles all claims by plaintiffs for all attorneys' fees and costs attributed by plaintiffs to Carol Ann Marshall in all capacities in this matter. Plaintiffs state this attribution is for 49.6 hours at the rate of $85.00 per hour plus a 25% increment factor and includes $2,742 in costs.

4. All other motions pending with regard to this matter are hereby withdrawn.

DONE this 24 day of May, 1982.

/s/ Winston E. Arnow

UNITED STATES DISTRICT JUDGE

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTH DIST., FLA.
PENSACOLA, FLA.

1982 May 24 AM 10:30

FILED

APPENDIX D
Article in January 6, 1984 Edition of the Pensacola Journal on Ratification of the District Court's March 11, 1983 Election System and Apportionment Plan

DISTRICT VOTE SYSTEM OK'd BY ESCAMBIA

By CRAIG PITTMAN
Journal Staff Writer

With a U.S. Supreme Court hearing only days away, the Escambia County Commission formally agreed Thursday to adopt the district voting system federal courts imposed on the county because of a voting rights suit.

The commission action came at the urging of Commissioner Willie Junior, the first black to serve on the board, who won his seat in the county's recent district elections.

Federal court judges ordered the switch to district elections to give blacks a better chance at electing one of their own to the commission. Previously all five commissioners were elected by all the voters in the county, under what is known as the at-large system.

Under the at-large system, blacks contended, a white candidate consistently stood a better chance of winning than a black one because whites outnumber blacks and both races tend to vote for their own candidate.

Charging that the at-large system discriminated against black voters, a committee of them filed suit against the commission in 1977. That suit is still on appeal. The U.S. Supreme Court has scheduled a hearing on the case next Tuesday morning.

One of the things the high court will be considering is a

request from the current commission to drop the case, conceding victory to the black plaintiffs.

On the day last month when the commission voted to drop the case, Junior also introduced a resolution to adopt the district voting system already imposed by the federal courts.

At that time, Junior could not get enough support for the resolution. On Thursday, however, he managed to pull together three of the commission's five votes to see the resolution passed.

The resolution formally sets the size of the commission at five members, each elected by the voters in his district on a staggered system. And its election district lines follow the ones approved by the federal judges.

The days of division are not over yet, though. The two commissioners who voted against the resolution, Kenneth Kelson and Max Dickson, have joined with four former commissioners in asking the Supreme Court not to drop the appeal of the voting rights suit.

The high court has said it will hear arguments from the current commissioners, the former commissioners and the black plaintiffs, all on the same day, before deciding whether or not to let Escambia County drop the case.

MOTION FILED
NOV 7 1983

NO. 82-1295

IN THE

Supreme Court of the United States

October Term, 1982

ESCAMBIA COUNTY, FLORIDA, et al.,

Appellants,

v.

HENRY T. McMILLAN, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AMICUS CURIAE, IN SUPPORT OF THE APPELLEES

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NO. 82-1295

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, et al.,
Appellants,

v.

HENRY T. McMILLAN, et al.,
Appellees

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE THE AMERICAN CIVIL LIBERTIES UNION

Comes now the above listed organization, by counsel, and moves the Court for leave to file a brief amicus curiae, in support of the appellees in the above-styled cause.[1]

1. Counsel for the appellants has declined to consent to the filing of this brief.

The American Civil Liberties Union is a nationwide membership organization with over 250,000 members. It has a long-standing concern with promoting equality of the franchise, both through the fourteenth and fifteenth amendments and federal statutory guarantees such as Section 2 of the Voting Right Act of 1965.

Attorneys for the American Civil Liberties Union have provided representation in voting rights cases throughout the country, and since 1965 the American Civil Liberties Union Foundation has maintained a Southern Regional Office which operates a Voting Rights Project, the primary goal of which is to provide representation for those citizens historically denied equal access to the manner in which our representatives are selected to govern.

Because of its concerns over

equality in voting, amicus seeks leave to file this Brief of Amicus Curiae.

Respectfully submitted,

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STATEMENT OF INTERESTS OF AMICUS CURIAE

The interests of amicus curiae are set forth in the motion for leave to file this brief, supra, p. i.

SUMMARY OF ARGUMENT

This Court should affirm the judgment below on the basis that as a result of the use of at-large elections in Escambia County, Florida, the political process is not equally open to blacks in violation of §2 of the Voting Rights Act of 1965, 42 U.S.C. §1973, as amended by Pub.L.No. 97-250, §3, 96 Stat. 131, 134 (1982). This statute, as amended during the pendency of this case, is applicable on direct appeal. See Cross v. Baxter, ___U.S.___, 103 S.Ct. 1515 (1983). The statutory claim should be resolved before, and if possible without reaching, the constitutional issue in accordance

with this Court's practice and policy against deciding constitutional questions unnecessarily. New York City Transit Authority v. Beazer, 440 U.S. 568, 582 (1979). Section 2, as amended, is aimed specifically at the type of case at issue here. H.R. Rep. No. 227, 97th Cong., 1st Sess. 28-29, n.94 (1981).*

Congress amended §2 of the Voting Rights Act in 1982 to ensure that the statutory standard for proving a violation be less burdensome and more objective than the requirements to prove discrimination in voting under the Constitution. The legislative history makes clear that under §2 plaintiffs do not need to prove discriminatory intent or purpose, but only that a challenged practice has discriminatory results. S.Rep. No. 417, 97th Cong., 2d Sess. 2, 16, 27-30, 67-68 (1982).*

*Hereinafter "House Rep." and "Senate Rep." respectively.

The §2 prohibition is broad, based on a functional view of the political process and applies to all forms of discrimination. Under a §2 analysis, unresponsiveness of elected officials is not to be weighed as a factor because it is too subjective. Election of black officials does not preclude existence of a violation of §2. Forseeability of the consequence of defendants' actions, disproportionate minority representation, past discrimination, and a low socio-economic condition of minorities are relevant evidence when a plaintiff is establishing a §2 violation. Id. at 28-30.

The findings of the courts below establish that the at-large election system for the Escambia County Board of Commissioners has discriminatory results and denies blacks equal access to the political process. This Court should not

disturb the findings of two federal courts, Neil v. Biggers, 409 U.S. 188, 193, n.3 (1972), and should affirm the judgment below pursuant to 42 U.S.C. §1973, as amended in 1982.

ARGUMENT

I. The judgment below should be affirmed on the basis that as a result of the use of at-large elections for the Board of County Commissioners in Escambia County, Florida, the political process is not equally open to black voters in violation of §2 of the Voting Rights Act of 1965, as amended in 1982.

The district court, in its July 10, 1978 decision on the merits, held that plaintiffs-appellees had established a violation of §2 of the Voting Rights Act of 1965, 42 U.S.C. §1973, as well as the fourteenth and fifteenth amendments. McMillan v. Escambia County, Florida, PCA No. 77-0432 (N.D. Fla. July 10, 1978); Jurisdictional Statement, 71a, 100-101a (hereinafter JS, ___)[1]. The court of

1. Citations to JS, 1a-29a are to the court of appeals' opinion as reproduced in the appendix to the Jurisdictional Statement. The published opinion may be found at 688 F.2d 960 (5th Cir. 1982). Citations to JS, 71a-115a are to the unpublished district court opinion.

appeals reversed, both as to the statutory and constitutional violations, relying upon the intervening decision in City of Mobile v. Bolden, 446 U.S. 55 (1980). McMillan v. Escambia County, Florida, 638 F.2d 1239 (5th Cir. 1981), JS, 30a-51a, 38a, n.9. It concluded that the evidence fell short "of showing that the [county commission] 'conceived or operated [a] purposeful [device] to further racial discrimination,'" quoting City of Mobile v. Bolden, 446 U.S. at 66, quoting Whitcomb v. Chavis, 403 U.S. 124, 149 (1971). JS, 43a. Appellees petitioned the court for rehearing and rehearing en banc. JS, 2a.

Subsequently, on June 29, 1982, Congress amended §2 to provide that election practices are unlawful under the statute if they have the "result" of

discriminating on the basis of race or color without regard to proof of discriminatory purpose. Pub.L. No. 97-205, §3, 96 Stat. 131, 134 (1982). The text of §2, as amended is attached hereto as Appendix A. Two days later, on July 1, 1982, this Court decided Rogers v. Lodge, ___ U.S. ___, 102 S.Ct. 3272 (1982), which held that discriminatory purpose need not be proved directly, but could be inferred from circumstantial evidence and the relevant fact of the particular case:

> [D]iscriminatory intent need not be proven by direct evidence. "Necessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts,..." [Washington v. Davis, 426 U.S. 229, 242 (1976)]. Thus determining the existence of a discriminatory purpose "demands a sensitive inquiry into such circumstantial and direct evidence as may be available." Arlington Heights [v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 266 (1977)].

102 S.Ct. at 3276.

The court of appeals subsequently granted appellees' petition for rehearing, vacated its earlier decision, and affirmed the district court, holding that the at-large method of electing the Board of County Commissioners was unconstitutional:

> The evidence in the record fully supports the district court's subsidiary findings. The court relied upon the aggregate of these findings involving Zimmer factors and other evidence in determining that the at-large system in Escambia County is being maintained for discriminatory purposes.

JS, 21a-22a.

As to the §2 claim, the court of appeals stated that appellees had "presented a cogent argument that the amended Act entitles them to relief," JS, 4a, n.2, but it declined to decide the case on statutory grounds for the reason that it would result in further unnecessary,

undersirable delay without affecting the outcome.

> Resolution of these issues could result in further delay and disruption of the electoral process in Escambia County. Moreover, the decision of these issues would not affect the outcome of this case because we hold...that appellees are entitled to relief on their fourteenth amendment claim.

JS, 5a, n.2.

Amicus contends that, while the court of appeals properly affirmed the finding of the district court in light of Rogers v. Lodge, supra, the decision below should be approved on the basis of amended §2 without reaching the constituional issue.

> A. This Court should decide this case by relying on the applicable statute and should avoid an unnecessary examination of the constitutional standard of proof required in a vote dilution case.

This Court has repeatedly held that statutory issues should be resolved at

the outset and that the determination of constitutional questions should be avoided unless necessarily reached. New York City Transit Authority v. Beazer, 440 U.S. 568, 582 (1979); Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346-47 (1936). Although the court of appeals did not decide the amended §2 issue, JS, 3a-5a, this Court is "not...foreclosed from considering the statutory question merely because the lower court failed to address it." United States v. Clark, 445 U.S. 23, 27 (1980) (citations omitted); New York City Transit Authority v. Beazer, supra, 440 U.S. at 583, n.24. For the reasons below, this Court's consideration of the statutory issue should be dispositive of this case, thus avoiding the need for deciding the

constitutional issue.[2]

The legislative history of amended §2 leaves no doubt as to Congress' intent that the new legislation should "apply to pending cases in accordance with the well-established principles of Bradley v. City of Richmond, 416 U.S. 696 (1974) and United States v. Alabama, 362 U.S. 602 (1960)." 128 Cong. Rec. S7095 (daily ed. June 18, 1982)(remarks of Sen. Kennedy, Senate Floor Manager); 128 Cong. Rec. H3841 (daily ed. June 23, 1982)(remarks on Rep. Sensenbrenner, House Floor manager).[3] In addition, the legislative history indicates that Congress had the

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2. Congress specifically provided that a private right of action exists to enforce amended §2. Senate Rep. at 30; House Rep. at 32.

3. As a general matter, this Court has held that new legislation, as well as new constitutional interpretations, are applicable to cases pending on appeal. The rule is that "a court is to apply the law in effect at the time
FOOTNOTE CONT'D ON NEXT PAGE

kind of case sub judice expressly in mind when it amended §2. For example, the House and Senate reports cited the court of appeals' first decision (which did not find a violation as to the system of electing Escambia County Commissioners, but which did find a violation as to the method of election of the Escambia County School Board and City of Pensacola Council) as examples, which it intended to address and correct, of: (1) the confusion surrounding the original §2

FOOTNOTE CONT'D

it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary." Bradley v. School Board of the City of Richmond, 416 U.S. 696, 711 (1974); accord, United States v. Alabama, 362 U.S. 602, 604 (1960); Hutto v. Finney, 437 U.S. 678, 694, n.23 (1978). Here, of course, the legislative history is explicit, and application of §2 to this case would promote congressional and public policy of non-discrimination in the electorate.

standard of proof, House Rep. at 28-29, n.94; (2) a case involving subtle and hidden racial motivations, House Rep. at 31, n.106; and (3) the heavy burden of proof placed on plaintiffs by City of Mobile, supra. Senate Rep. at 37-38 and n.138.

In comformity with the legislative history, this Court has consistently applied amended §2 to pending cases. See Cross v. Baxter, ___U.S.___, 103 S.Ct. 1515 (1983); City of Lockhart v. United States, ___U.S.___, 103 S.Ct. 998 (1983); and, Brooks v. Winter, ___ U.S. ___, 103 S.Ct. 2077 (1983).[4]

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4. In neither Cross, City of Lockhart nor Brooks did the lower courts, as here, make detailed findings of vote dilution. Thus, remand, while proper in those cases, is inappropriate here where the issues are whether the finding of dilution of the lower courts is sustainable, and whether the basis of this Court's decision should be statutory or constitutional.

The statute, designed as it was to apply to cases such as this, furnishes a basis for decision without requiring the Court unnecessarily to reach the broader constitutional questions involved.

B. Section 2 of the Voting Rights Act, as amended in 1982, embodies a different standard of proof than for a constitutional violation.

Congress, pursuant to its broad remedial powers to enforce the fourteenth and fifteenth amendments, and in response to City of Mobile v. Bolden, supra, amended §2 of the Voting Rights Act to provide an independent cause of action for denial of equal voting rights.[5]

5. The Senate as a whole adopted the version of the Act reported out of the Committee on the Judiciary, which was in turn adopted in whole by the House of Representatives, with the understanding that the effect of the §2 amendment was identical under either the original House bill or the Senate bill. 128 Cong. Rec. H3839-46 (daily ed. June 23, 1982).

Differences in claims under the statute and the constitution include:

1. Proof of discriminatory purpose is not required for a statutory violation, regardless of the standard of proof necessary to establish a violation of the constitution. Senate Rep. at 2, 16, 27-30, 67-8; House Rep. at 2, 28-32. Compare, City of Mobile, supra, 446 U.S. at 67 (citing Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 265 (1977) that "proof of racially discriminatory purpose is required to show a violation of the Equal Protection Clause"), and Rogers v. Lodge, supra, 102 S.Ct. at 3275-76, n.6 (noting that the plurality in City of Mobile held that the fifteenth amendment prohibition was limited to purposeful discrimination, but expressing no further view on the issue).

Amended §2 prohibits any voting procedure which results in a denial or abridgment of the right to vote on account of race, color, or membership in a language minority. The Senate explained that it "had amended §2 to permit plaintiffs to prove violations by showing that minority voters were denied an equal chance to participate in the political process, i.e., by meeting the pre-Bolden results test." Senate Rep. at 16.[6]

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6. The Senate, in adopting language directly from White v. Regester, 412 U.S. 755 (1973), in subsection (b) of §2, explained that it was adopting its understanding of the White, or pre-Bolden, results test, but that in any event, the "specific intent of this amendment is that the plaintiffs may choose to establish discriminatory results without proving any kind of discriminatory purpose." Senate Rep. at 28 (footnote omitted). Consistent with Congressional understanding of the pre-Bolden results test, both houses indicated that amendment of §2 was appropriate "to restate Congress' earlier intent that violation of the Voting Rights Act, including §2, could be established by showing the
FOOTNOTE CONT'D ON NEXT PAGE

Although in Rogers v. Lodge the standard of proof established in City of Mobile was relaxed and this Court recognized that intent could be inferred from circumstantial evidence, 102 S.Ct. at 3276, the standard of proof under §2 was still less burdensome that than under the Constitution because "a finding of the appropriate factors showing current dilution is sufficient, without any need to decide whether those findings, by themselves, or with additional circumstantial evidence, also warrant an inference of discriminatory purpose." Senate Rep. at 28, n.112.[7]

FOOTNOTE CONT'D

discriminatory effect of the challenged practice." House Rep. at 29 (footnote omitted). Senate Rep. at 16.

7. Lower court decisions applying the new amended §2 standard include Taylor v. Haywood County, Tenn., 544 F.Supp. 1122, 1133-34 (W.D. Tenn. 1982) (granting motion for preliminary

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2. The §2 prohibition against discrimination extends to a broad range of practices, including vote dilution, and is not limited in scope as constitutional guarantees may be.[8] The Senate

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FOOTNOTE CONT'D

injunction, in part because of plaintiff's likelihood of success under §2 test and distinguishing results test of amended §2 from the §2 standard discussed in City of Mobile); and City of West Helena v. Perkins, 675 F.2d 201, 217 (8th Cir. 1983) (finding at-large elections for West Helena, Arkansas to be in violation of §2). Also see F. Parker, The "Results" Test of Section 2 of the Voting Rights Act: Abandoning the Intent Standard, 69 Va.L.Rev. 715 (1983).

8. As the court of appeals below noted, amended §2 "encompasses a broader range of impediments to minorities' participation in the political process than those to which the Bolden plurality suggested the original provision was limited." JS, 3a-4a, n.2.

directly addressed this distinction, commenting that:

> for purposes of Section 2, the conclusion in the Mobile plurality opinion that "there were no inhibitions against Negroes becoming candidates, and that, in fact, Negroes had registered and voted without hindrance," would not be dispositive. Section 2, as amended, adopts the functional view of "political process" used in White rather than the formalistic view espoused by the plurality in Mobile. Likewise, although the plurality suggested that the Fifteenth Amendment may be limited to the right to cast a ballot and may not extend to claims of voting dilution (without explaining how, in that case, one's vote could be "abridged") this section without question is aimed at discrimination which takes the form of dilution, as well as outright denial of the right to register or to vote.

Senate Rep. at 30, n.120; cf., City of Mobile, 446 U.S. at 65, and Rogers v. Lodge, 102 S.Ct. at 3276, n.6. The House of Representatives specified that

the §2 prohibition was "intended to include not only voter registration requirements and procedures, but also methods of election and electoral structures, practices and procedures which discriminate." House Rep. at 30-31, citing to Allen v. State Board of Elections, 393 U.S. 544, 569 (1969).

3. Section 2 "avoids highly subjective factors such as responsiveness of elected officials to the minority community" in determining a violation of voting rights, because "[u]se of this criterion creates inconsistencies among court decisions on the same or similar facts and confusion about the law among government officials and voters." House Rep. at 30. "[D]efendants' proof of some responsiveness would not negate plaintiff's showing...that minority voters nevertheless were shut out of

equal access to the political process." Senate Rep. at 29, n.116. However, in constitutional cases, unresponsiveness may be "an important element...in determining whether discriminatory purpose may be inferred." Rogers v. Lodge, supra, 102 S.Ct. at 3280, n.9.[9]

4. Forseeability of the consequences of defendants' actions is "quite relevant evidence" when a plaintiff is establishing a violation of §2, Senate Rep. at 27, n.108 (citing Dayton Board of Education v. Brinkman, 443 U.S. 526, 536, n.9 (1976)), although apparently not significant in a constitutional case. City of Mobile, 446 U.S. at 71-72, n.17.

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9. In Rogers, this Court modified the court of appeals' holding that proof of unresponsiveness was an essential element of vote dilution claims under the fourteenth amendment. 102 S.Ct. at 3280, n.9.

Congress, in sum, not only indicated that plaintiffs need not show a racial purpose to prevail under §2, but it provided that the §2 test be less burdensome on plaintiffs and, as appears more fully infra, at p. 35, n.11, more objective than the constitutional analysis.

C. The opinions of the two federal courts below support the finding of a violation of §2.

The evidence upon which the district court based its finding that the at-large election system in Escambia County was unconstitutional and in violation of the original §2 of the Act, included nearly all of the factors listed by Congress as typical of those that plaintiffs could show to establish a violation of the new results standard of amended §2. The court of appeals concurred in the district court's findings of fact, stating that "the evidence in the record fully supports the district court's subsidiary findings." Js, 21a. Such "findings of fact concurred in by two lower courts" should not be reversed "unless shown to be clearly erroneous." Neil v. Biggers, 409 U.S. 188, 198, n.3 (1972); see also,

Rogers v. Lodge, 102 S.Ct. at 3279.

The courts below based their findings on the totality of the circumstances and specifically relied upon factors which Congress identified in the legislative history as showing a violation of amended §2:

1. History of discrimination. Congress stated that one factor supporting a §2 violation is a "history of discrimination affecting the right to vote." House Rep. at 30; accord, Senate Rep. at 28. In the instant case, the district court found, and the court of appeals specifically considered and affirmed these findings, such a history in a review of the methods by which the members of the board of county commissioners have been selected. JS, 16a-17a; 74a-77a. The courts noted that the system had its "genesis in the midst of a con-

certed state effort to institutionalize white supremacy." JS, 16a; 74a. The lower courts found that the governor of Florida appointed the county commissioners from 1868 to 1901 in order to prevent majority black counties from electing blacks. Id. Other statewide actions affecting blacks' right to vote which the courts recognized were: the institution of a poll tax in 1889, passage of Jim Crow laws beginning in 1900, and the exclusion of blacks from the Democratic Party at the same time. JS, 16a; 74a-75a. The courts found that the at-large election of county commissioners was permitted in 1901 after "enough blacks were disenfranchised" and single-member district primaries were instituted in 1907 under the white primary system. Id. The district court stated that "the resulting anomaly between having district

primary elections and at-large general elections worked, not surprisingly, to the unique disadvantage of blacks.... In effect, the white primary was the election." JS, 75a. The courts noted that after the white primary was struck down by the state courts in 1945, the primary system was eventually changed from district to at-large. JS, 17a; 75a-76a. Finally, the district court found further support for its findings in the county commissioners' recent rejection of a committee's recommendation to submit to the voters a proposal to change to single member districts. JS, 77a.

The lower Courts also found a history of discrimination in education and employment and a low socio-economic status of blacks, factors recognized by Congress as hindering blacks' participation in the political process. Senate

Rep. at 28-29. The district court declared that:

> State enforced segregation and discrimination have helped create two societies in the city and county - segregated churches, clubs, neighborhoods and, until a few years ago, schools. These laws left blacks in an inferior social and economic position, with generally inferior education. The lingering effects upon black individuals, coupled with their continued separation from the dominant white society, have helped reduce black voting strength and participation in government.

JS, 86a; JS 17a-18a.

2. Disproportionate number of minority officeholders. The fact that members of a racial minority have "not been elected in numbers equal to the group's proportion of the population... would be highly relevant" according to the legislative history of §2. House Rep. at 30; accord, Senate Rep. at 29. The district court below found that "[a]lthough blacks constitute 20% of the

county's population and 17% of its registered voters, no black has ever been elected under the county's...at-large election systems. Blacks have run time and again, and always lost." JS, 80a; JS, 13a-14a.

3. Racially polarized voting. The extent to which voting is racially polarized is a factor upon which plaintiffs can rely in part to establish a §2 violation. House Rep. at 30; accord, Senate Rep. at 29. The district court here found that there is a pattern of consistent racially polarized voting in Escambia County, which once resulted in a candidate from the county's active Ku Klux Klan receiving 3,000 votes in an election. JS, 80a. The court of appeals summarized the statistical findings concerning the county commission elections set forth in Appendix A to the

district court's opinion explaining that the "R^2 coefficient, which reflects the percentage of variation in the vote attributable to the race of the registered voters in the races in which black candidates ran, ranged from .85 to .98." JS, 14a, n.12, 107a. The courts found that "the numerical minority of blacks coupled with the white bloc vote prevented blacks from attaining a majority of votes in the county." JS, 14a.

4. At-large elections. The legislative history of §2 makes it clear that "[n]ot all at-large election systems would be prohibited under [the §2] amendment," but the listed factors to consider in the aggregate include "discriminatory elements of the electoral system such as at-large elections." House Rep. at 30. The district court below found that the five commissioners in Escambia County are

"elected at-large by the qualified voters of the entire county." JS, 73a, 3a. In addition, if a candidate is a member of a major political party, he or she must run at-large in a party primary for the nomination. Id.

5. Majority vote requirement. Congress' list of factors relevant to the establishment of a §2 violation included the presence of a majority vote requirement. House Rep. at 30; accord, Senate Rep. at 29. The district court found that the party primaries, which major political parties are required to hold, include majority vote requirements. JS, 73a, 3a. The courts further observed that although there is not such a requirement for the general election, "as a practical matter, no one has in recent history won a general election without a majority." JS, 5a, n.3, 87a.

6. Unusually large election districts.

The extent to which a county uses unusually large election districts is one of the factors to weigh in a §2 analysis. Senate Rep. at 29. The district court observed that the county commissioners "are elected at-large by the qualified voters of the entire county. Thus, they must each run for office in a single district covering approximately 657 square miles (fifty-one miles in length) with a population of 205,334 in 1970 and a projected population of 269,508 in 1980." JS, 73a. The district court characterized this as a large election district and considered it as an enhancing factor which increases the tendency of at-large elections to dilute blacks' voting strength. JS, 87a, 20a-21a.

7. Numbered posts. The legislative history of §2 indicated that the existence of numbered posts in an electoral system

enhances the opportunity for discrimination. House Rep. at 30. The district court noted that candidates for the board of county commissioners "run for numbered places. This means that blacks are always pitted in head-on-head races with white candidates, and that the black community cannot concentrate its votes in a large field of candidates." JS 87a-88a, 21a. The candidates in party primaries also run for numbered places. JS, 73a.

8. Tenuous state policy. Included in the legislative history as an additional factor that has probative value in a §2 case is "whether the policy underlying the...use of such voting...procedure is tenuous." Senate Rep. at 29. The courts below clearly stated that they "found the policy behind the at-large system for electing County Commissioners tenuous." JS 19a, 86a. They found

racial motivations connected with the at-large requirements and, in their analysis of the constitutional claim, found purposeful discrimination in the maintenance of the system. JS, 21a-22a, 99a-100a.

9. Failure to win party nomination. Another factor for courts to consider is "the failure of minorities to win party nomination." House Rep. at 30. The courts below found that "[n]one of the blacks who ran [for county commission] was able to obtain the majority of votes necessary to win the Democratic primary." JS, 14a.

10. Prohibitions on single-shot voting. Congress stated that the existence of prohibitions on single-shot voting was a relevant factor in a §2 analysis. House Rep. at 30; accord, Senate Rep. at 29. Although the courts

recognized that there was no anti-single-shot requirement in the Escambia County election system, they did observe that numbered posts operate to prevent blacks from concentrating their votes in a large field of candidates, a result similar to that under anti-single-shot provisions. JS, 21a, 87a-88a. In addition, the courts found that the five county commissioners are elected to staggered terms. JS, 3a, 73a. This technique also achieves the same goal as anti-single-shot provisions by preventing blacks from concentrating their votes in multi-seat races on one candidate, since fewer seats are filled in any single election.[10]

---

10. For a further explanation of the goal of anti-single-shot provisions see Parker, The "Results" Test of Section 2 of the Voting Rights Act: Abandoning the Intent Standard, 69 Va.L. Rev. 715, 717, n.15 (1983).

11. Other Relevant Factors. Congress made clear that the factors showing a §2 violation listed in the legislative history were not exclusive, but that other factors depending upon the circumstances of a particular case could be relevant evidence of prohibited dilution. Senate Rep. at 29. One such factor found by the courts here was a filing fee of approximately $1,000, which the courts concluded had a deterrent effect on minority candidacy. JS, 17a, 80a.[11]

---

11. The two courts below, although they found unresponsiveness of the county commissioners in their failure to appoint blacks to advisory boards and in their housing policy, JS, 18a, n.16; 84a-85a, concluded that the commissioners were responsive "by and large." JS, 85a. The reports of both houses indicate, however, that while a significant lack of responsivenss of elected officials to minority needs may be some evidence of a §2 violation, unresponsiveness is generally to be avoided in resolving §2 claims, because it is an overly subjective, unreliable factor and leads to inconsis-
FOOTNOTE CONT'D NEXT PAGE

Virtually all of the objective factors identified by Congress as showing a violation of amended §2 were found by the lower courts in this case.[12] In addition, the district court also found that discriminatory intent was a motivation in the maintenance of the at-large system for electing county commissioners. JS, 96a. The court of appeals, after an initial decision to the contrary, supra,

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FOOTNOTE CONT'D

tent decision-making in cases presenting analogous facts. House Rep. at 30; Senate Rep. at 29, and n.116.

12. The only factors listed in the legislative history not expressly found by the courts below were discriminatory slating and racial appeals in campaigns. Senate Rep. at 29. Giving the overwhelming evidence of vote dilution, however, and the admonition in the legislative history against "point counting," the absence of these factors cannot be deemed significant in the totality of circumstances of this case. House Rep. at 30; Senate Rep. at 29.

pp. 5-8, affirmed the district court's inference of intentional discrimination and held the electoral system to be unconstitutional. JS, 13a, 29a. An election system which is maintained because of purposeful discrimination violates amended §2 as well. Congress ensured that the "alternative standard of proving that a voting practice or procedure is unlawful if a discriminatory purpose was a motivating factor would still be available to plaintiffs in such cases." House Rep. at 30, n.101.

CONCLUSION

For the foregoing reasons, this Court should (1) address plaintiffs' statutory claim under §2 of the Voting Rights Act of 1965, as amended; (2) defer to the district court's findings of fact "representing as they do a blend of

history and an intensely local appraisal," White v. Regester, 412 U.S. 755, 769-70 (1973); (3) adhere to the "two court rule," under which "the Court does not lightly overturn the concurrent findings of fact of two lower federal courts," Neil v. Biggers, 409 U.S. 188, 193, n.3 (1972); (4) conclude that the method of electing the Escambia County Board of Commissioners results in racial discrimination in voting in violation of §2; and, (5) affirm the judgment below.

Respectfully submitted,

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APPENDIX A

Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973:

> Sec. 2.
>
> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to

office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Office-Supreme Court, U.S.
FILED
NOV 7 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1295

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ESCAMBIA COUNTY, FLORIDA, *et al.*,
Appellants,
v.
HENRY T. MCMILLAN, *et al.*

On Appeal from the United States Court of Appeals for the Fifth Circuit

---

MOTION FOR LEAVE TO FILE AND BRIEF *AMICUS CURIAE* OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW IN SUPPORT OF APPELLEES

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---

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Lawyers' Committee for Civil Rights Under Law, pursuant to Sup. Ct. Rule 36, moves the Court for leave to file the attached brief as *amicus curiae* supporting affirmance of the decision below. The appellees have consented to the filing of this brief, but appellants have refused to consent to this filing.

The Lawyers' Committee is a non-profit organization established in 1963 at the request of the President of the United States to involve leading members of the bar throughout the country in the national effort to assure civil rights to all Americans. The Committee's membership includes two former Attorneys General, one former District Judge, a former Solicitor General, several past presidents of the American Bar Association, and three law school deans. Protection of the equal voting rights of

citizens has been an important aspect of the work of the Committee. This Court has granted the Lawyers' Committee leave to file *amicus curiae* briefs in a number of important voting rights cases decided by this Court, including most recently *Rogers* v. *Lodge*, —— U.S. ——, 102 S.Ct. 3272 (1982); *McDaniel* v. *Sanchez*, 452 U.S. 130 (1981), and *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980). The Lawyers' Committee has more than fifteen years experience in litigating voting rights cases, including several appearances in this Court.

This case has importance beyond its immediate facts because the Court's ruling will likely have an impact on a number of pending cases and future litigation in this area. The Lawyers' Committee is involved in several pending cases challenging at-large election schemes, and the Court's ruling may have an effect on this pending litigation.

We seek leave of this Court to file this brief to present arguments different from those presented by appellants, and which are likely to be different from those presented by appellees. Our discussion of the merits is primarily a fact-based presentation. We believe that the findings of the District Court on the merits fit squarely within the legal standards and factual criteria for a finding of discriminatory purpose set forth by this Court in *Rogers* v. *Lodge*, *supra*, *White* v. *Regester*, 412 U.S. 755 (1973), and *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971), and that there are serious procedural difficulties with appellants' effort to overturn the District Court's factual findings at this stage of this case. On the remedy issue, we believe that the District Court did adopt the proper legal standard that deference should be accorded any legislatively-enacted plan, but that it was justified on the facts of this case in adopting a court plan. But unlike any of the parties to this appeal, we contend that the present posture of the case prevents the District Court from giving deference to appellants' proposed 5-2 redistricting plan

because that plan would be retrogressive of existing levels of black voting strength.

WHEREFORE, the Lawyers' Committee for Civil Rights Under Law respectfully moves the Court for leave to file the attached brief *amicus curiae*.

Respectfully submitted,

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IN THE

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v.

HENRY T. MCMILLAN, *et al.*

On Appeal from the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

SUMMARY OF ARGUMENT

Appellants' appeal on the merits is primarily a challenge to the District Court's findings of fact—its finding of intentional discrimination and its subsidiary findings which support its finding of intent. The District Court as the trier of the facts had the opportunity fully to review the record made and to judge the credibility of the witnesses and the evidence presented. Its judgment deserves deference, constituting as it does "an intensely local appraisal of the design and impact" (*White* v. *Regester*, 412 U.S. 755, 769-70 (1973)) of at-large voting in Escambia County. The District Court's findings were fully reviewed by the Court of Appeals and determined

upon application of the proper legal standard not to be clearly erroneous. Under these circumstances, the District Court's findings cannot be overturned in this Court except upon a very obvious and exceptional showing of error.

The meticulous factual findings of the District Court amply support an inference of purposeful discrimination. The findings made and legal principles applied both by the District Court and the Court of Appeals bring this case firmly within the ambit of *Rogers* v. *Lodge*, —— U.S. ——, 102 S.Ct. 3272 (1982), and *White* v. *Regester*, *supra*, in which this Court affirmed findings of Fourteenth Amendment violations based on evidence which is virtually identical to that present here showing purposeful exclusion of minorities from effective participation in the political processes in the counties. The evidence is even stronger here where the District Court found that the county commissioners gave inconsistent explanations for their preference for at-large voting and failed to provide a legitimate, nondiscriminatory explanation for maintaining this discriminatory system.

On the issue of the proper remedy, the District Court applied the proper legal standard in recognizing the rule of deference to legislative judgment in formulating a remedy, but properly rejected the 5-2 plans proposed by the county commissioners. The rationale of the rule of deference to the legislative judgment of the elected representatives of the people no longer applies when the proposed legislative plan has been rejected by the people themselves in referendum voting. Under these circumstances, the normal presumption of legitimacy accorded legislative plans cannot be indulged. Further, since the current county elections are being held under a plan which gives black voters the opportunity to elect candidates of their choice to one seat on the five-member commission, any of the 5-2 plans proposed by the commissioners would have the discriminatory effect prohibited

by the Voting Rights Act of reducing existing levels of black voting strength. The District Court fully considered the proposals of the county commissioners for a mixed 5-2 plan, and its rejection of those plans on the facts of this case does not constitute an abuse of discretion.

ARGUMENT

I. THE FINDINGS OF THE TWO LOWER COURTS THAT AT-LARGE COUNTY COMMISSION ELECTIONS HAVE BEEN MAINTAINED FOR A RACIALLY DISCRIMINATORY PURPOSE ARE NOT CLEARLY ERRONEOUS AND SHOULD BE AFFIRMED.

As in *Rogers* v. *Lodge*, —— U.S. ——, 102 S.Ct. 3272 (1982), this case involves the issue of whether at-large county commissioner elections violate the Fourteenth Amendment rights of black citizens. As this Court repeatedly has noted:

> At-large voting schemes and multimember districts tend to minimize the voting strength of minority groups by permitting the political majority to elect *all* the representatives of the district. A distinct minority, whether it be a racial, ethnic, economic, or political group, may be unable to elect several representatives in an at-large election, yet may be able to elect several representatives if the political unit is divided into single-member districts. The minority's voting power in a multimember district is particularly diluted when bloc voting occurs and ballots are cast along strict majority-minority lines.

102 S.Ct. at 3275. Accord: *Connor* v. *Finch*, 434 U.S. 407, 415 (1977); *White* v. *Regester*, 412 U.S. 755, 765 (1973); *Whitcomb* v. *Chavis*, 403 U.S. 124, 158-59 (1971); *Allen* v. *State Board of Elections*, 393 U.S. 544, 569 (1969).

In this case, although Escambia County is now approximately 20 percent black, no blacks have been elected

to the five-member county commission since at-large elections were adopted in 1901. The dilutive impact of this scheme is dramatically shown by the results of the most recent county elections. Under the second remedial plan adopted by the District Court, Escambia County was divided into five single-member districts, one of which is majority black in population and in registered voters. *McMillan* v. *Escambia County*, 559 F. Supp. 720, 726 (N.D. Fla. 1983), *on appeal*, No. 83-3275 (11th Cir.). In the primary election held under this plan in September, one black won nomination to the county commission for the first time in this century, and that black candidate is heavily favored to win in the November general election. Appellants in this appeal seek to overturn the District Court's decision and to return Escambia County to the countywide election system which has denied black voters an equal opportunity to elect candidates of their choice to county government since 1901.

A. The District Court Applied the Proper Legal Standard, and Its Finding of Purposeful Discrimination May Not Be Set Aside Unless Found To Be Clearly Erroneous and Upon a Very Obvious and Exceptional Showing of Error.

While at-large elections are not per se unconstitutional, they do violate the Fourteenth Amendment when

> "conceived or operated as purposeful devices to further racial . . . discrimination" by minimizing, cancelling out or diluting the voting strength of racial elements in the voting population.

Rogers, *supra*, 102 S.Ct. at 3275 (quoting *Whitcomb* v. *Chavis*, *supra*, 403 U.S. at 149). Here the District Court applied the correct legal standard to hold, on the evidence presented at trial, that although the at-large voting system was not enacted for invidious purposes, "The present at-large election system for county commissioners is being maintained for discriminatory purposes" (J.S. App.

98a). Appellants do not dispute that the District Court applied the proper legal standard in ruling that to find a constitutional violation: "It must also be shown that discriminatory intent was a motivating factor in the enactment of the system or is a motivation in the present maintenance of the system" (J.S. App. 92a, citing *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977)). Rather, appellants contend merely that the District Court's findings of intent are wrong based on the evidence presented.[1]

---

[1] The District Court found that Escambia County's at-large election system violated both the Fourteenth and Fifteenth Amendments and Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973 (J.S. App. 100a-101a). Appellants have not asked this Court to address the question whether the District Court should have avoided decision on constitutional grounds if adequate statutory grounds were available. The District Court fully explained its decision to address both constitutional and statutory grounds for its decision (*id.*). At the time, the view was prevalent that the language of Section 2 of the Voting Rights Act no more than elaborates upon that of the Fifteenth Amendment (J.S. App. 101a; see *City of Mobile* v. *Bolden*, 446 U.S. 55, 60 (1980) (plurality opinion)). Since then, Congress has amended Section 2 of the Voting Rights Act to eliminate the requirement of proving discriminatory intent to make out a violation of that section. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 3, 96 Stat. 131, 134 (to be codified at 42 U.S.C. § 1973). Even though that section now employs a "results" test, a finding of discriminatory intent also would be sufficient to establish a violation of that section. "Plaintiffs must either prove such intent [footnote omitted], or, alternatively, must show that the challenged system or practice, in the context of all the circumstances in the jurisdiction in question, results in minorities being denied equal access to the political process." S. Rep. No. 97-417, 97th Cong., 2d Sess. 27 (1982). Thus, if the Court sustains the District Court's findings of discriminatory intent, no remand would be necessary. However, if the Court reverses the District Court's finding of intent, then the Court should remand to give the black voter plaintiffs an opportunity to satisfy the new Section 2 "results" test. *Brooks* v. *Winter*, 51 U.S.L.W. 3825 (U.S. May 16, 1983); *Cross* v. *Baxter*, 51 U.S.L.W. 3720 (U.S. April 4, 1983).

In their efforts to set aside the District Court's finding of intentional discrimination, appellants have failed to overcome three procedural barriers to disturbing the trial court's findings traditionally recognized by this Court: the "clearly erroneous" standard of Rule 52(a), Fed. R. Civ. P., the traditional deference this Court has given to the "intensely local appraisal" by District Courts of factual records in voting cases, and the two-court rule.

"Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Rule 52(a), Fed. R. Civ. P. In *Rogers* v. *Lodge*, 102 S.Ct. at 3278, and *Pullman-Standard* v. *Swint*, 456 U.S. 273, 287-88 (1982), this Court reaffirmed that findings of intent are governed by Rule 52(a)'s "clearly erroneous" standard of review. This standard therefore governs the trial court's finding in this case that at-large county commissioner elections are being maintained for a discriminatory purpose. In reviewing that finding, and the trial court's subsidiary findings which support that ultimate finding, this Court must give due regard, not only "to the opportunity of the trial court to judge the credibility of the witnesses," but also to the fact that the trial court's findings constitute "an intensely local appraisal of the design and impact [of at-large elections] in light of past and present reality, political and otherwise." *White* v. *Regester*, *supra*, 412 U.S. at 769-70.

The District Court's finding of purposeful discrimination also is governed by this Court's two-court rule, under which this Court has refused to disturb findings of fact concurred in by two lower courts in the absence of "very obvious and exceptional showing of error." *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U.S. 271, 275 (1949); see also, *Rogers* v. *Lodge*, *supra*, 102 S.Ct. at 3278-79; *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635 (1967); *Blau* v. *Lehman*, 368 U.S. 403, 408-09

(1962). This Court must consider that the trial court's findings on the merits were thoroughly and completely reviewed by the Court of Appeals on two separate occasions, *McMillan* v. *Escambia County*, 638 F.2d 1249 (5th Cir. 1981), and 688 F.2d 960 (5th Cir. 1982). All of the contentions made by appellants in this appeal were fully considered, and ultimately rejected, by the Court of Appeals. Upon reevaluation in light of the proper legal standard set out in *Rogers* v. *Lodge*, the Court of Appeals thoroughly reviewed the District Court's finding of intentional discrimination and all of its subsidiary findings in light of the "clearly erroneous" standard. 688 F.2d at 965-69. Based on that review, the Court of Appeals specifically affirmed the trial court's finding: "Applying the standard enunciated by the Supreme Court in *Lodge*, we cannot say the district court's finding of intent was clearly erroneous." 688 F.2d at 969.

B. The District Court's Finding of Purposeful Discrimination Is Amply Supported by Its Subsidiary Findings of Fact and the Evidence Presented at Trial.

Appellants' argument on the facts of this case boils down to the contention that in the absence of "smoking gun" evidence, there can be no finding of discriminatory purpose. Thus, their argument that "there was no evidence that the system was established or maintained for a discriminatory purpose" (Brief of Appellants, p. 22) is really an argument that there is no "smoking gun." [2]

[2] Appellants contend that the Fifth Circuit erred in granting the petition for rehearing following this Court's decision in *Rogers* v. *Lodge*, in reversing its earlier decision, and in affirming the findings of the District Court in favor of the black voter plaintiffs because the legal standard applicable to constitutional vote dilution cases articulated in *Rogers* is the same as that enunciated in *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980), and *McMillan I* (638 F.2d 1249 (5th Cir. 1981)). Brief of Appellants, pp. 23-26.

Appellants are correct that both *Rogers* and *Bolden* require proof of purposeful discrimination, but the critical difference is in the effect to be given to circumstantial, indirect evidence of discrim-

The Escambia County commissioners have not admitted maintaining at-large voting to dilute black voting strength. But "smoking gun" evidence is rarely obtainable in cases of this sort,[3] and has never been required. This Court repeatedly has ruled that "discriminatory intent need not be proven by direct evidence." *Rogers supra*, 102 S.Ct. at 3276. "Necessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." *Arlington Heights, supra*, 429 U.S. at 265; *Washington* v. *Davis*, 426 U.S. 229, 242 (1976). "Determining whether invidious purpose was a motivating factor demands a sen-

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inatory intent. The Fifth Circuit in *McMillan I*, despite its citation to *Arlington Heights*, apparently misconstrued *Bolden* to hold that circumstantial evidence was not sufficient to support a finding of discriminatory intent, and that proof of the *White-Zimmer* factors also was insufficient for a showing of invidious purpose (638 F.2d at 1243). Otherwise, there is no explanation for the Fifth Circuit's initial conclusion that there was "no evidence of racial motivation" (*id.* at 1245) and for its failure to discuss the District Court's *White-Zimmer* findings in its section on the county commission (*id.* at 1244-45).

Rogers makes clear that direct evidence of discriminatory intent is not required (102 S.Ct. at 3276), and by embracing the reasoning of *Nevett* v. *Sides*, 571 F.2d 209 (5th Cir. 1978), acknowledges that the *White-Zimmer* factors may support an inference of discriminatory purpose (*id.* at 3277-78).

[3] See *Lodge* v. *Buxton*, 639 F.2d 1358, 1363 n.8 (5th Cir. 1981), *aff'd sub nom. Rogers* v. *Lodge*, *supra*:

> We think it can be stated unequivocally that, assuming an electoral system is being maintained for the purpose of restricting minority access thereto, there will be no memorandum between the defendants, or legislative history, in which it is said, "We've got a good thing going with this system; let's keep it this way so those Blacks won't get to participate." Even those who might otherwise be inclined to create such documentation have become sufficiently sensitive to the operation of our judicial system that they would not do so. Quite simply, there will be no "smoking gun."

sitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights, supra*, 429 U.S. at 266.

On the factual record presented, there was ample evidence for the District Court to draw the inference that at-large voting has been maintained for a discriminatory purpose. The District Court found that although black citizens constitute 20 percent of the county's population and 17 percent of the county's registered voters, no black has been elected to the county commission since at-large voting was adopted in 1901 (J.S. App. 80a). Black candidates ran for the county commission four times, but no black candidate succeeded in winning either in the Democratic primary or in the general election (J.S. App. 80a-81a, Appendix A, 107a). Having failed four times between 1966 and 1970, black candidates became frustrated and gave up running again "because blacks cannot win" (J.S. App. 80a).

The District Court found that the complete record of county elections since 1955 shows "a consistent racially polarized or bloc voting pattern which operates to defeat black candidates" (J.S. App. 80a). Correlation analyses of the voting results for twelve races for both the county commission and the county school board (also elected at-large) demonstrate an overwhelming relationship between the race of the voters and the election results. In six of these election contests, over 90 percent of the variation in the vote is attributable to the race of the registered voters by precinct; the lowest R^2 showing the percent of the variation in the vote attributable to race was 69 percent (J.S. App. 107a-109a).[4] On similar facts, this Court held in *Rogers* v. *Lodge*:

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[4] This type of statistical analysis is commonly accepted by the courts as providing strong evidence of racially polarized voting. See, e.g., *Kirksey* v. *Board of Supervisors of Hinds County*, 554 F.2d 139, 149 (5th Cir. *en banc*), *cert. denied*, 434 U.S. 968 (1977); *Major* v. *Treen*, Civil No. 82-1192 (E.D. La. Sept. 23, 1983) (slip

> These facts bear heavily on the issue of purposeful discrimination. Voting along racial lines allows those elected to ignore black interests without fear of political consequences, and without bloc voting the minority candidates would not lose elections solely because of their race. Because it is sensible to expect that at least some blacks would have been elected . . . , the fact that none have ever been elected is important evidence of purposeful exclusion.

102 S.Ct. at 3279. See also, *White* v. *Regester*, *supra* 412 U.S. at 766; *Perkins* v. *City of West Helena*, 675 F.2d 201, 213 (8th Cir.), *aff'd mem.*, —— U.S. ——, 74 L.Ed.2d 47 (1982).

While these facts in themselves may be insufficient to prove purposeful discrimination, both the District Court and the Court of Appeals considered additional evidence supporting an inference of intentional discrimination. The District Court found an extensive past history of official discrimination designed to disenfranchise black voters in Florida. The county commission and school board election systems "had their genesis in the midst of a concerted state effort to institutionalize white supremacy" (J.S. App. 74a). County Commissioners were appointed by the Governor from 1868 to 1901 "to ensure that blacks were not elected in majority black counties" (J.S. App. 74a). The poll tax and the white primary were adopted to disenfranchise black voters (J.S. App. 74a-75a). After the white primary was instituted, the Florida Legislature in 1907 instituted a "dual system" under which county commissioners were nominated from single-member districts in the white primary, but elected at-large in the general election to prevent the election of blacks (*id.*).

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op. at 30-35) (three-judge court); *Kirksey* v. *City of Jackson*, 461 F.Supp. 1282, 1289-90 (S.D. Miss. 1978), *vac'd and remanded on other grounds*, 625 F.2d 21 (5th Cir. 1980). See generally, D. BALDUS AND J. COLE, STATISTICAL PROOF OF DISCRIMINATION § 5.321 (1980); N. NIE, C. HULL, J. JENKINS, K. STEINBRENNER, AND D. BENT, SPSS: STATISTICAL PACKAGE FOR SOCIAL SCIENCES at 279-80 (2d ed. 1975).

When the white primary was struck down, at-large elections were mandated for primary elections as well (*id.*). The District Court also found that state-enforced segregation and discrimination "have helped create two societies in the city and county—segregated churches, clubs, neighborhoods and, until a few years ago, schools. These laws left blacks in an inferior social and economic position, with generally inferior education. The lingering effects upon black individuals, coupled with their continued separation from the dominant white society, have helped reduce black voting strength and participation in government" (J.S. App. 86a). The court found that this past history of state-sanctioned segregation and discrimination has contributed to the present racially-polarized voting patterns (J.S. App. 86a-87a). This past discrimination "has created barriers to the full participation of blacks in the present political processes," the District Court concluded (J.S. App. 89a).

> Evidence of historical discrimination is relevant to drawing an inference of purposeful discrimination, particularly in cases such as this one where the evidence shows that discriminatory practices were commonly utilized, that they were abandoned when enjoined by courts or made illegal by civil rights legislation, and that they were replaced by laws and practices which, though neutral on their face, serve to maintain the status quo.

Rogers v. *Lodge*, *supra*, 102 S.Ct. at 3280. See also, *White* v. *Regester*, *supra*, 412 U.S. at 766; *Perkins* v. *City of West Helena*, *supra*, 675 F.2d at 211.

The District Court also made findings regarding elements of the county's electoral system which discriminate against minority voters and candidates. A filing fee of approximately $1,000 is required for candidates for the county commission (J.S. App. 80a). Escambia County is large in both population and geographic size; it currently has a population of 233,794 within an area of approxi-

mately 661 squares miles (Brief of Appellants, p. 3). Such a large size makes it "more difficult for Blacks to get to polling places or to campaign for office." *Rogers, supra*, 102 S.Ct. at 3280-81. Escambia County also has a majority vote requirement to win party nomination, and "as a practical matter, no one has in recent history won a general election without a majority," although no majority vote in the general election is legally required (J.S. App. 87a). This majority vote requirement, mandated by both law and electoral necessity, like the majority vote requirement in *Rogers* v. *Lodge* works "to submerge the will of the minority" and to "deny the minority's access to the system." *Rogers, supra*, 102 S.Ct. at 3281. Escambia County also requires that candidates run for specific seats with numbered places on the ballot. "This means that blacks are always pitted in head-on-head races with white candidates, and that the black community cannot concentrate its votes in a large field of candidates," the trial court found (J.S. App. 87a-88a). This Court also has noted the discriminatory impact of this requirement. *Rogers, supra*, 102 S.Ct. at 3281; *White, supra*, 412 U.S. at 766. These discriminatory features of the Escambia County electoral process, the District Court found, operate to deny black voters equal access to the political process: "The problems faced by blacks seeking access to the political processes are enhanced by the size of the at-large districts involved, the practical necessity or legal requirements of getting a majority vote to be elected, and the requirement that candidates run in numbered places" (J.S. App. 89a).

The District Court found that although the county commission has generally been responsive to black needs, it has been unresponsive in two critical areas. The District Court found that the "commissioners have failed to appoint any more than a token number of blacks to its committees and boards. The black population representing 20% of the county is thus served by an all-white board of commissioners which depends on virtually

(95%) all-white advisory panels" (J.S. App. 84a-85a). The District Court determined that these facts showing that blacks are "severely underrepresented" "has independent significance because of the absence or near absence of blacks in elected positions. With such a paucity of black elected and appointed representatives, blacks are excluded from all positions of responsibility in the governmental policymaking machinery" (J.S. App. 90a-91a). It concluded that "the lack of black appointees exacerbates the inability of blacks to participate fully in the political process and is further evidence of dilution" (*id.*). The District Court also found unresponsiveness in housing policy: "Special studies have indicated there may be housing discrimination within the county which has been ignored by the commissioners" (J.S. App. 85a). Such evidence of unresponsiveness, although not an essential element of a constitutional vote dilution claim (*Rogers, supra*, 102 S.Ct. at 3280 n. 9), does "increase[] the likelihood that the political process [is] not equally open to blacks." *Rogers, supra*, 102 S.Ct. at 3280. See also, *White* v. *Regester*, 412 U.S. at 769; *Perkins* v. *City of West Helena, supra*, 675 F.2d at 210-11.

These findings alone, under this Court's decisions in *Rogers* v. *Lodge* and *White* v. *Regester*, are sufficient to support the District Court's finding that at-large county commission elections have been maintained for a discriminatory purpose. The evidentiary factors supporting an inference of discriminatory intent found here are virtually identical to those found to exist in *Rogers* and *White*.[5]

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[5] The District Court's opinion also is fully consistent with *Whitcomb* v. *Chavis, supra*. The evidence of intentional denial to blacks of equal access to the political process which was absent in that case—evidence of denial of equal access, findings indicating that blacks were not allowed to register or to vote, exclusion from party affairs (403 U.S. at 149-50)—is fully present here on the District Court's findings.

In addition to these factors, the District Court gave two additional reasons for finding intentional discrimination: the "tenuous policy" behind the preference for at-large voting, and the absence of a consistent, legitimate, nondiscriminatory explanation for the retention of at-large elections.

The District Court ruled that "the evidence shows a tenuous policy behind the at-large requirement . . ." (J.S. App. 86a). As previously noted, from 1907 to 1954—when the white primary rule was in effect—primary elections for the county commissioners were conducted on the basis of single-member districts. These white primaries "were then tantamount to election" (*id.*), and thus dual system of district primaries and at-large general elections "worked, not surprisingly, to the unique disadvantage of blacks" (J.S. App. 75a). The Florida Legislature switched to at-large primaries for county school board elections "in the very first legislative session after the white primary was struck down" (*id.*). District primaries for county commissioners continued until 1954 (*id.*, 75a-76a). These important findings show that historically in Florida the preference for at-large voting has been rooted in discriminatory motives. "[A] state policy in favor of at-large districts that is shown to be 'tenuous' is evidentiary of invidious intent." *Cross* v. *Baxter*, 604 F.2d 875, 884-85 (5th Cir. 1975).

Further, the District Court carefully scrutinized the reasons given by the county commissioners at trial for retaining at-large voting and found that they had failed to present a legitimate, consistent, nondiscriminatory reason for its retention. In 1975 and again in 1977, before this action was filed, the county commissioners appointed committees to study the advisability of a change in the form of county government, and both committees recommended a change to single-member districts (J.S. App. 77a, 96a). Black voters also supported the recommendations for the change (*id.*). Despite these recommenda-

tions of their own appointed committees, the commissioners rejected these recommendations and refused even to permit a referendum allowing the county's voters to express their views on these recommendations (*id.*). One commissioner had served on one of these committees and joined in its recommendation in favor of single-member districts, but then repudiated his own recommendation when he voted with the other commissioners against holding the referendum (*id.*).

At trial, all the commissioners gave the same reason for striking single-member district elections from the referendum proposal; each stated his personal belief that the at-large requirement made the board more responsive to the needs of the community (J.S. App. 97a). However, the District Court found that this rationale was inconsistent with the manner in which the county commission actually operates (J.S. App. 97a-98a). In actual operation, each commissioner is responsible for county services within his district of residence (*id.*). County road funds, for example, are apportioned equally to each of the five districts, with each commissioner getting 20 percent of the road funds. "Their expressed concern about countywide elections and representation," the District Court found, "does not stand foresquare with the present operation of the commission and its business" (J.S. App. 98a).

Then, in their post-trial brief, the appellants gave a separate and different reason for retaining at-large elections—"the commissioners' desire to maintain their incumbency" (*id.*). Based upon its observation of the appellants' testimony at trial, the District Court found that "the reasonable inference to be drawn from their actions in retaining at-large districts is that they were motivated, at least in part, by the possibility that single district elections might result in one or more of them being displaced in subsequent elections by blacks [footnote omitted]" (*id.*). This inference is sound as a matter of law. While redistricting standards may take into

account the incumbency factor, under certain circumstances such as those which are present here the admitted goal of preserving an all-white group of incumbents may be considered tantamount to an admission of purposeful discrimination. As the three-judge District Court recently held in the Illinois legislative reapportionment case:

> Under the peculiar circumstances of this case, the requirements of incumbency are so closely intertwined with the needs for racial dilution that an intent to maintain a safe, primarily white district . . . is virtually coterminous with a purpose to practice racial discrimination.

Rybicki v. *State Board of Elections*, Civil No. 81-C-6030 (N.D. Ill. Jan. 12, 1982) (slip op. at 65). Accord: *Major* v. *Treen*, Civil No. 82-1192 (E.D. La. Sept. 23, 1983) (three-judge court) (slip op. at 76) (protection of white incumbents may not serve to justify racial gerrymandering in congressional redistricting).

Given the District Court's findings that appellants have failed to present an adequate, racially neutral justification for the retention of at-large elections, which according to the District Court's own findings are based upon its judgment of the credibility of the witnesses and its "intensely local appraisal" of the design and impact of Escambia County's countywide voting scheme, the District Court properly concluded that "[t]he present at-large election system for county commissioners is being maintained for discriminatory purposes" (J.S. App. 98a). *Arlington Heights*, *supra*, 429 U.S. at 267.

On the basis of these findings, for which there is ample support in the record, the District Court had broad discretion to draw an inference that at-large elections were being maintained by the county commissioners for a discriminatory purpose. These subsidiary findings were sufficient to sustain the District Court's finding of discriminatory purpose, and that finding should be affirmed.

II. THE DISTRICT COURT PROPERLY REJECTED THE COUNTY COMMISSIONERS' PROPOSED PLAN AS A REMEDY FOR PURPOSEFULLY DISCRIMINATORY AT-LARGE ELECTIONS.

Upon finding that an at-large voting scheme unlawfully dilutes black voting strength, the District Court is bound to give the local jurisdiction an opportunity to propose a new plan to remedy the violation. *Upham* v. *Seamon*, 456 U.S. 37, 41-42 (1982); *Wise* v. *Lipscomb*, 437 U.S. 535, 539 (1978) (plurality opinion); *Connor* v. *Finch*, 431 U.S. 407, 414 (1977). If the responsible legislative body is forthcoming with a plan, then the District Court must evaluate that plan to determine whether it meets federal constitutional and statutory requirements as a remedy for the violation. *Rogers* v. *Lodge*, *supra*, 102 S.Ct. at 3281; *Upham*, *supra*, 456 U.S. at 42; *Wise*, *supra*, 473 U.S. at 540. If no valid remedy is forthcoming from the legislature, "when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical to do so" (473 U.S. at 540), or when a jurisdiction covered by Section 5 of the Voting Rights Act fails to obtain preclearance of its new plan (*id.* at 541-42), then the District Court has the obligation to devise a redistricting plan which provides a proper remedy. This Court has set forth strict but reasonable standards governing such court-ordered redistricting plans: They must contain only *de minimis* deviations from population equality, and single-member districts are preferred unless the court can articulate a "singular combination of unique factors" that justifies a different result. *Connor* v. *Finch*, *supra*, 431 U.S. at 415-17; *Chapman* v. *Meier*, 420 U.S. 1, 26-27 (1975).

The District Court in this case fully recognized its obligation "to afford a reasonable opportunity for the legislative body itself to meet constitutional requirements by adopting a substitute measure" (J.S. App. 104a) and gave the county commissioners an opportunity to adopt a new plan which remedied the constitutional violation

found to exist. The county commissioners proposed a 5-2 plan under which five commissioners would be elected by single-member districts, and two commissioners would be elected at-large. However, the District Court, considering itself bound by the votes of five Justices in *Wise* v. *Lipscomb*, 437 U.S. 535 (1978), determined that it could not accept the county commissioners' 5-2 plan once it had been rejected by the voters of Escambia County in the November 6, 1979 referendum (J.S. App. 67a-68a, 54a). The District Court determined (J.S. App. 68a), and the Court of Appeals agreed (688 F.2d at 971), that the Florida Constitution prohibits the county commissioners from legislatively altering their form of government in the absence of approval from the county's voters in a referendum supporting the adoption of a county charter. Accordingly, the District Court adopted a court-ordered remedy which provides for the election of all five commissioners from single-member districts.

Appellants contend that the District Court erred and should have deferred to the preferences of the county commissioners even in the absence of express state legislative authority to adopt a new plan under the "legislative judgment" test of *McDaniel* v. *Sanchez*, 452 U.S. 130 (1981).

However, under the facts of this case, the District Court was correct to reject the commissioners' preferred plan. The rationale for the rule of deference to a legislature's plan is that it "reflect[s] the policy choices of the elected representatives of the people, rather than the remedial directive of a federal court." *Wise*, *supra*, 437 U.S. at 548 (Powell, J., concurring opinion). Cf. *McDaniel* v. *Sanchez*, *supra*, 452 U.S. at 153 ("the policy choices of the elected representatives of the people"). The rationale for deferring to the legislative judgment of the elected representatives of the people disappears, however, when the voters themselves have rejected the very plan adopted by their representatives. Because the legis-

lative judgment is tainted by the people's rejection of such a plan, the normal presumption of legitimacy accorded a product of the democratic processes, see *Burns* v. *Richardson*, 384 U.S. 73, 84-85 (1966), cannot be indulged. Cf. *Wise*, *supra*, 437 U.S. at 549 (Powell, J., concurring) (Section 5 objection taints legislative judgment and deprives legislative plan of "normal presumption of legitimacy"). If, as the Court ruled in *McDaniel*, "the essential characteristic of a legislative plan is the exercise of legislative judgment" (452 U.S. at 152) presumably reflecting the popular will, that "essential characteristic" is no longer present when the plan contravenes the popular will itself. For these reasons, the District Court in 1979 was correct, on the particular facts of this case, in not deferring to the 5-2 plan offered by the appellants as a legislative plan.[6]

Further, there is an additional reason not directly considered by the courts below, in the present posture of this case, why the District Court was correct in reject-

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[6] In March, 1983, the District Court rejected different 5-2 plans offered by the appellants, but on grounds other than the one assigned in its 1979 opinions. The District Court ruled that appellants' plans (1) failed to "provide an adequate remedy for the unconstitutional vote dilution found to exist in this case"; (2) that adoption of a seven-member commission would constitute an intrusion upon Florida's state policy of five-member county commissions which is prohibited by *White* v. *Weiser*, 412 U.S. 783, 795 (1973); (3) violated the purpose and effect standard of Section 3(c) of the Voting Rights Act, 42 U.S.C. § 1973a(c); and (4) violated Section 2 of the Voting Rights Act, as amended in 1982, 96 Stat. 134. 559 F. Supp. 720. The District Court's 1983 judgment is now on appeal to the Court of Appeals for the Eleventh Circuit.

The plans offered by the appellants in that proceeding, and the plan ordered into effect by the District Court, and the reasons given by the District Court for rejecting appellants' proposed plans supersede the District Court's 1979 remedial orders which are the subject of this appeal. Accordingly, the Court may well determine that meaningful review of the District Court's 1979 remedial orders, which are the only remedial orders presented in this appeal, has now been precluded by further proceedings in the court below.

ing the county commissioners' 5-2 proposal. Because the 1979 plan adopted by the District Court was determined to be malapportioned according to 1980 Census data, the District Court in 1983 adopted a new 5-district single-member plan. 559 F. Supp. 720. Under that plan, one district is majority black in both population and registered voters (559 F. Supp. at 726), and black voters thus have the opportunity to elect one member out of the five-member commission (20 percent). The 1983 county commissioner elections are now taking place under that plan, and as previously noted a black candidate already has won in the Democratic primary election.

Under these circumstances, black voters would be severely disadvantaged by the adoption of the county commissioners' 5-2 plan. At the 1983 hearing, appellants presented two 5-2 plans, one of which contained one majority black district and another—which the appellants preferred (*id.* at 726)—which had no district with a black majority (*id.*). Even if the first plan were adopted by the District Court, black voters would be able to elect only one member to a seven-member commission, and thus would be able to elect only 14 percent of the commission's membership. Further, the number of white-majority districts in which black voters would be unable to elect candidates of their choice would be increased from 4 to 6. Thus, it is apparent that the adoption of any of the 5-2 plans preferred by appellants would under the existing circumstances of this case "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U.S. 130, 141 (1973).

The present court-ordered plan should serve as the benchmark for measuring the retrogressive effect of any of appellants' proposed 5-2 plans because it is the county redistricting plan which currently is in effect and under which the 1983 county elections have been held. See *Mississippi* v. *United States*, 490 F. Supp. 569, 582 (D.D.C. 1979) (three-judge court), *aff'd mem.*, 444 U.S.

1050 (1980); *Mississippi* v. *Smith*, 541 F. Supp. 1329, 1333 (D.D.C. 1982) (three-judge court), *appeal dism'd*, 51 U.S.L.W. 3789 (U.S. May 2, 1983). The *Beer* retrogression standard directly applies to jurisdictions covered by the "effect" standard of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Although not covered by Section 5, Escambia County by court order (see 559 F. Supp. at 727) has been put under Section 3(c) of the Voting Rights Act, 42 U.S.C. § 1973a(c), which in words identical to those used in Section 5 prohibits implementation of any voting law change unless and until the District Court determines that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . ." Because the statutory language and legislative purpose of Section 3(c) are identical to that of Section 5 of the Voting Rights Act, the *Beer* retrogression standard should be applicable here and should preclude adoption of appellants' 5-2 plans. A similar retrogression standard also has been employed in constitutional litigation, and new plans which diminish existing levels of black voting strength have been found unconstitutional on Fourteenth and Fifteenth Amendment grounds. See, e.g., *Moore* v. *Leflore County Board of Election Commissioners*, 361 F. Supp. 603 (N.D. Miss. 1972), *aff'd*, 502 F.2d 621 (5th Cir. 1974).

The District Court therefore was correct in not approving appellants' 5-2 proposal because, under the circumstances of this case, it would have a present retrogressive effect and therefore would constitute a statutory violation of Section 3(c) of the Voting Rights Act.

Although the notion of adopting a mixed system has some facial appeal, see *City of Mobile* v. *Bolden*, 446 U.S. at 82 (Blackmun, J.), extensive empirical analyses in the social science literature indicate that mixed systems, with some officials elected by district and others elected at-large, also have the discriminatory impact of

reducing the opportunities for minority representation in county and city government. See, e.g., Engstrom and McDonald, *The Election of Blacks to City Councils: Clarifying the Impact of Electoral Arrangements on the Seats/Population Relationship*, 75 Am. Pol. Sci. Rev. 344 (1981); Davidson and Korbel, *At-Large Elections and Minority-Group Representation: A Re-Examination of Historical and Contemporary Evidence*, 43 J. Politics 982 (1981).

Although such a mixed system might appear to be an appealing compromise between the desires of black voters for representation in county government—which is denied them under the all at-large system—and the stated wishes of the incumbent commissioners for some county-wide seats to represent the county as a whole, such a system is inadequate as a remedy for at-large voting because it retains in the at-large seats elements of the system found to have been maintained for invidious purposes. This case is different from *Bolden* because here the District Court on several occasions, most recently in March, 1983 (559 F. Supp. 720), did consider appellants' proposals for expanding the size of the county commission and providing for the election of at least some commissioners at-large (cf. 446 U.S. at 82). After giving full consideration to appellants' proposals, the District Court exercised its discretionary remedial authority (see *Rogers* v. *Lodge*, *supra*, 102 S.Ct. at 3281) in rejecting appellants' proposals. In reviewing the District Court's decision, the Court of Appeals determined that "the remedial plan adopted by the district court was fully within its discretion." 688 F.2d at 972. On the record in this case, there is no basis for this Court—twice removed from the "intensely local appraisal" of the trier of facts—to conclude that there was an abuse of discretion.

CONCLUSION

For the foregoing reasons, and the basis of the authorities cited, the judgment below should be affirmed.

Respectfully submitted,

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SHORT) PROCEEDINGS AND ORDERS DATE: 020784

CASE NBR 82-1-01295 AFX CASE STATUS: GRANTED
SHORT TITLE Escambia Co., FL, et al. DOCKETED: Feb 2 1983
VERSUS McMillan, Henry T., et al.

Entry	Date	Note	Proceedings and Orders
1	Feb 2 1983	G	Statement as to jurisdiction filed.
2	Nov 23 1983		Application for stay filed, and order denying same by Powell, J., on December 2, 1982.
3	Feb 25 1983	G	Motion of State Association of County Commissioners of Florida, et al. for leave to file a brief as amici curiae filed.
5	Mar 7 1983		Motion of appellees Henry McMillan, et al. to dismiss or affirm filed.
6	Mar 4 1983		Brief amicus curiae of Orange County, Florida filed.
7	Mar 9 1983		DISTRIBUTED. March 25, 1983
8	Mar 21 1983	X	Reply brief of appellant Escambia Co., FL, et al. filed.
10	Mar 28 1983		REDISTRIBUTED. April 1, 1983
12	Apr 11 1983		REDISTRIBUTED. April 15, 1983
13	Apr 18 1983		Motion of State Association of County Commissioners of Florida, et GRANTED.
14	Apr 18 1983		PROBABLE JURISDICTION NOTED.
			**********
16	May 3 1983		Order extending time to file brief of appellant on the merits until July 18, 1983.
18	May 3 1983		Order extending time to file brief of appellee on the merits until September 16, 1983.
19	May 18 1983		Application for stay filed with Powell, J. (A-939).
20	May 21 1983		Response requested -- due May 24, 1983.
21	May 24 1983		Response in opposition filed.
22	May 26 1983		Order denying same by Powell, J.
23	Jul 15 1983		Order further extending time to file brief of appellant on the merits until August 8, 1983.
24	Aug 1 1983		Record filed.
25	Aug 2 1983		Certified original record & C.A. proceedings, Volumes 1-12, received.
26	Aug 1 1983		Volumes 13-26 received. (2 boxes).
29	Aug 8 1983		Joint appendix filed.
30	Aug 8 1983		Brief of appellants Escambia Co., FL, et al. filed.
32	Sep 6 1983		Order extending time to file brief of appellee on the merits until October 17, 1983.
33	Oct 11 1983		Order further extending time to file brief of appellee on the merits until November 7, 1983.
34	Nov 7 1983	G	Motion of Lawyers' Committee for Civil Rights Under Law for leave to file a brief as amicus curiae filed.
35	Oct 26 1983	D	Motion of appellants for an order maintaining status quo filed.
36	Nov 7 1983		Opposition of appellees to motion of appellants for order maintaining status quo filed.
37	Nov 8 1983		DISTRIBUTED. November 11, 1983. (Above motion)
38	Nov 8 1983		Reply of appellants to order maintaining status quo.

CONTINUE {
{SHDKT }

PROCEEDINGS AND ORDERS

DATE: 020784

CASE NBR 82-1-01295 AFX
SHORT TITLE Escambia Co., FL, et al.
VERSUS McMillan, Henry T., et al.

CASE STATUS: GRANTED
DOCKETED: Feb 2 1983

Entry	Date	Note	Proceedings and Orders
39	Nov 7 1983	G	Motion of American Civil Liberties Union for leave to file a brief as amicus curiae filed.
40	Nov 7 1983		Brief of appellees Henry McMillan, et al. filed.
41	Nov 14 1983		Motion of Lawyers' Committee for Civil Rights Under Law for leave to file a brief as amicus curiae GRANTED.
43	Nov 14 1983		Motion of appellants for an order maintaining status quo DENIED.
44	Nov 15 1983		CIRCULATED.
45	Nov 28 1983		Motion of American Civil Liberties Union for leave to file a brief as amicus curiae GRANTED.
46	Nov 23 1983		SET FOR ARGUMENT. Tuesday, January 10, 1984. (3rd case)
47	Nov 23 1983		Record filed.
		*	These are ceretified exhibits - not a record.
48	Nov 23 1983		Certified exhibits (Boxes). 1, 3 & 6, received 11-23. 2 & 5 of 6 rec'd 11-25. 4 of 6 rec'd 11-28.
49	Dec 7 1983	N	Motion of appellants Escambia County, Florida, et al. to dismiss the appeal filed.
50	Dec 7 1983		DISTRIBUTED. Dec. 9, 1983. (Above motion).
51	Dec 12 1983		Further consideration of the notice of substitution of party appellants and motion of certain appellants to
52	Dec 12 1983		dismiss the appeal is deferred to hearing of the case on the merits on January 10, 1984.
53	Jan 3 1984	X	Reply brief of appellants Escambia Co., FL, et al. filed.
54	Jan 6 1984	X	Supplemental brief of appellees Henry McMillan, et al. filed.
55	Jan 10 1984		ARGUED.
56	Jan 26 1984	P	Motion of appellants Kenneth J. Kelson, et al. for leave to file response to supplemental brief of appellees filed.